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| Sec. | Cross-reference | Title of cross-referenced material or comment |
|---|---|---|
| 20.1300 .... | 38 CFR 1.500–1.527 ..... | See re the release of information from Department of Veterans Affairs claimant records. |
| | 38 CFR 1.550–1.559 ..... | See re the release of information from Department of Veterans Affairs records other than claimant records. |
| | 38 CFR 1.575–1.584 ..... | See re safeguarding personal information in Department of Veterans Affairs records. |
| | 38 CFR 20.1301 ..... | *Rule 1301. Disclosure of information.* |
| 20.1301 .... | 38 CFR 1.577 ..... | *Access to records.* |
| 20.1302 .... | 38 CFR 20.611 ..... | *Rule 611. Continuation of representation following death of a claimant or appellant.* |
| 20.1304 .... | 38 CFR 3.103(c), 20.700–20.717. | See also rehearings. |
| | 38 CFR 3.156 ..... | *New and material evidence.* |
| | 38 CFR 3.160(e) ..... | *Reopened claim.* |
| | 38 CFR 20.305 ..... | *Rule 305. Computation of time limit for filing.* |
| | 38 CFR 20.306 ..... | *Rule 306. Legal holidays.* |

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# PART 21—VOCATIONAL REHABILITATION AND EDUCATION

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

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

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

SOURCE: 49 FR 40814, Oct. 18, 1984, unless otherwise noted.

VOCATIONAL REHABILITATION OVERVIEW

### § 21.1 Training and rehabilitation for veterans with service-connected disabilities.

(a) *Purposes.* The purposes of this program are to provide to eligible veterans with compensable service-connected disabilities all services and assistance necessary to enable them to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

(Authority: 38 U.S.C. 3100)

(b) *Basic requirements.* Before a service-disabled veteran may receive training and rehabilitation services under Chapter 31, Title 38 U.S.C., three basic requirements must be met:

(1) The Department of Veterans Affairs must first find that the veteran has basic entitlement to services as prescribed by § 21.40.

(Authority: 38 U.S.C. 3102)

(2) The services necessary for training and rehabilitation must be identified by the Department of Veterans Affairs and the veteran.

(Authority: 38 U.S.C. 3106)

(3) An individual written plan must be developed by the Department of Veterans Affairs and the veteran describing the goals of the program and the means through which these goals will be achieved.

(Authority: 38 U.S.C. 3107)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

NONDUPLICATION

### § 21.21 Election of benefits under education programs administered by the Department of Veterans Affairs.

(a) *Election of benefits required.* A veteran must make an election of benefits among the programs of education administered by VA for which he or she may be eligible. A veteran who has basic entitlement to rehabilitation under chapter 31 and is also eligible for assistance under any of the other education programs administered by VA must make an election of benefits between chapter 31 and any other VA program of education for which he or she may be eligible. The veteran may reelect at any time if he or she is otherwise eligible. (See §§ 21.264 and 21.334.)

(Authority: 38 U.S.C. 1781(b))

(b) *Use of prior training in formulating a rehabilitation program.* If a veteran has pursued an educational or training program under an education program listed in § 21.4020 of this part, the earlier program of education or special restorative training shall be utilized to the extent practicable.

(Authority: 38 U.S.C. 3695(b))

[53 FR 880, Jan. 14, 1988, as amended at 57 FR 57108, Dec. 3, 1992]

### § 21.22 Nonduplication—Federal programs.

(a) *Allowances.* A service-disabled veteran who is eligible for benefits under Chapter 31, may not receive a subsistence allowance or elect payment of an allowance at the educational assistance rate under Chapter 30 pursuant to § 21.264 if the veteran:

(1) Is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or

(2) Is attending a course of education or training paid for under Chapter 41, Title 5 U.S.C. and whose full salary is being paid to such veteran while so training.

(Authority: 38 U.S.C. 3681; Pub. L. 98–525)

(b) *Services which may be authorized.* A service-disabled veteran who is in one of the two categories defined in paragraph (a) of this section is entitled to receive all benefits, other than an allowance, to which he or she is otherwise entitled under Chapter 31, including:

(1) Payment of any tuition and fees not paid for by the Armed Forces.

(2) The cost of special services, such as reader services, tutorial assistance,

and special equipment during the period of such training.

(Authority: 38 U.S.C. 3681)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

CLAIMS

### § 21.30 Claims.

A specific claim in the form prescribed by the Department of Veterans Affairs must be filed for:

(a) A program of rehabilitation services, or

(b) Employment assistance.

(Authority: 38 U.S.C. 501(a), 3102, 3117, 5101(a))

### § 21.31 Informal claim.

Any communication or action indicating an intent to apply for rehabilitation or employment assistance, from a veteran, a duly authorized representative, or a Member of Congress may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the veteran for execution. In the case of a claim for rehabilitation, or employment assistance, the formal claim will be considered filed as of the date of receipt of the informal claim if received within 1 year from the date it was sent to the veteran, or before cessation of the course, whichever is earlier.

(Authority: 38 U.S.C. 501(a), 5101(a), 5103(a))

### § 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))

[74 FR 31855, July 6, 2009]

### § 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)

[74 FR 31856, July 6, 2009]

DEFINITIONS

**§ 21.35 Definitions.**

(a) *Employment handicap.* This term means an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(1), 3102)

(b) *Independence in daily living.* This term means the ability of a veteran, without the service of others, or with a reduced level of the services of others, to live and function within such veteran's family and community.

(Authority: 38 U.S.C. 3101(2))

(c) *Program of education.* This term means:

(1) A combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, professional or vocational objective; or

(2) Such subjects or courses which are generally acceptable to meet requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; or

(3) Any unit course or subject, or combination of courses or subjects, pursued by an eligible veteran at any educational institution required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of section (7)(i)(1) of the Small Business Act.

(Authority: 15 U.S.C. 636(i)(1), 38 U.S.C. 3452(b))

(d) *Program of independent living services and assistance.* This term includes:

(1) The services provided in this program that are needed to enable a veteran to achieve maximum independence in daily living, including counseling, diagnostic, medical, social, psychological, and educational services determined by the Department of Veterans Affairs to be necessary, and

(2) The monthly allowance authorized by 38 U.S.C. Chapter 31 for such a veteran.

(Authority: 38 U.S.C. 3101(4))

(e) *Rehabilitated to the point of employability.* This term means that the veteran is employable in an occupation for which a vocational rehabilitation program has been provided under this program

(Authority: 38 U.S.C. 3101(5))

(f) *Rehabilitation program.* This term includes, when appropriate:

(1) A vocational rehabilitation program (see paragraph (i) of this section);

(2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(Authority: 38 U.S.C. 3101(6); Pub. L. 99–576)

(3) A program of employment services for employable veterans who are prior participants in Department of Veterans Affairs or state-federal vocational rehabilitation programs.

(Authority: 38 U.S.C. 3117)

(g) *Serious employment handicap.* This term means a significant impairment

of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(7)

(h) *Vocational goal.* (1) The term *vocational goal* means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;

(2) The term *achievement of a vocational goal is reasonably feasible* means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;

(3) The term *achievement of a vocational goal is not currently reasonably feasible* means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:

(i) Prevent the veteran from successfully achieving a vocational goal at that time; or

(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 3101(8))

(i) *Vocational rehabilitation program.* This term includes:

(1) The services that are needed for the accomplishment of the purposes of 38 U.S.C. Chapter 31 including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Department of Veterans Affairs to be needed;

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:

(A) Determining whether a vocational goal is reasonably feasible;

(B) Improving the veteran's potential to participate in a program of services designed to achieve a vocational goal;

(C) Enabling the veteran to achieve maximum independence in daily living;

(ii) In the case of a veteran for whom achievement of a vocational goal is feasible, such services include assisting the veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment; and

(2) The term also includes the monetary assistance authorized by 38 U.S.C. Chapter 31 for a veteran receiving any of the services described in this paragraph.

(Authority: 38 U.S.C. 3101(9); Pub. L. 99–576)

(j) *Program of employment services.* This term includes the counseling, medical, social, and other placement and post-placement services provided to a veteran under 38 U.S.C. Chapter 31 to assist the veteran in obtaining or maintaining suitable employment.

(Authority: 38 U.S.C. 3117)

(k) *Other terminology.* The following are primarily intended as explanations rather than definitions of terms to which frequent reference will be made in these regulations.

(1) *Counseling psychologist.* Unless otherwise stated, the term *counseling psychologist* refers to a counseling psychologist in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

(2) *Vocational rehabilitation specialist.* Unless otherwise stated, the term *vocational rehabilitation specialist* refers to a vocational rehabilitation specialist in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration of the Department of Veterans Affairs, or to a Department of Veterans Affairs counseling psychologist performing the duties of a vocational rehabilitation specialist.

(Authority: 38 U.S.C. 3118(c))

(3) *School, educational institution, institution.* These terms means any public or private school, secondary school, vocational school, correspondence school,

business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults.

(Authority: 38 U.S.C. 3452(c))

(4) *Training establishment.* This term means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e))

(5) *Rehabilitation facility.* This term means a distinct organizational entity, either separate or within a larger insititution or agency, which provides goal-oriented comprehensive and coordinated services to individuals designed to evaluate and minimize the handicapping effects of physical, mental, social and vocational disadvantages, and to effect a realization of the individual's potential.

(Authority: 38 U.S.C. 3115(a))

(6) *Workshop.* This term means a charitable organization or institution, conducted not for profit, but for the purpose of carrying out an organized program of evaluation and rehabilitation for handicapped workers and/or for providing such individuals with remunerative employment and other occupational rehabilitative activity of an educational or therapeutic nature.

(Authority: 38 U.S.C. 3115(a))

(7) *Vocational rehabilitation counselor.* Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 53 FR 50956, Dec. 19, 1988; 62 FR 17707, Apr. 11, 1997]

ENTITLEMENT

### § 21.40 Basic entitlement to vocational rehabilitation benefits and services.

An individual meets the basic entitlement criteria for vocational rehabilitation benefits and services under this subpart if VA determines that he or she meets the requirements of paragraph (a), (b), (c), or (d) of this section. For other requirements affecting the provision of vocational rehabilitation benefits and services, *see* §§ 21.41 through 21.46 (period of eligibility), § 21.53 (reasonable feasibility of achieving a vocational goal), and §§ 21.70 through 21.79 (months of entitlement).

(a) *Veterans with at least 20 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated 20 percent or more under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(b) *Veterans with 10 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment,

for a disability that VA will likely determine to be service-connected. In addition, VA must have determined that:

(1) The hospital or other medical facility providing the hospitalization, care, service, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned;

(2) The individual is in need of rehabilitation because of an employment handicap; and

(3) The individual has a disability or combination or disabilities that will likely be:

(i) At least 10 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; or

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(Authority: 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Pub. L. 101–508, 104 Stat. 1388–347; sec. 404(b), Pub. L. 102–568, 106 Stat. 4338, as amended by sec. 602, Pub. L. 103–446, 108 Stat. 4671)

[75 FR 3164, Jan. 20, 2010]

PERIODS OF ELIGIBILITY

### §21.41 Basic period of eligibility.

(a) *Time limit for eligibility to receive vocational rehabilitation.* (1) For purposes of §§21.41 through 21.46, the term *basic period of eligibility* means the 12-year period beginning on the date of a veteran's discharge or release from his or her last period of active military, naval, or air service, and ending on the date that is 12 years from the veteran's discharge or release date, but the beginning date may be deferred or the ending date extended under the sections referred to in paragraph (b) of this section. (*See* §§21.70 through 21.79 concerning duration of rehabilitation programs.)

(2) Except as provided in paragraph (b) or (c) of this section, the period during which an individual may receive a program of vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 is limited to his or her basic period of eligibility.

(b) *Deferral and extension of the basic period of eligibility.* VA may defer the beginning date of a veteran's basic period of eligibility under §21.42. VA may extend the ending date of a veteran's basic period of eligibility under §21.42 (extension due to medical condition); §21.44 (extension for a veteran with a serious employment handicap), §21.45 (extension during a program of independent living services and assistance), and §21.46 (extension for a veteran recalled to active duty).

(Authority: 38 U.S.C. 3103)

(c) *Servicemember entitled to vocational rehabilitation services and assistance before discharge.* The basic period of eligibility for a servicemember who is entitled to vocational rehabilitation services and assistance under 38 U.S.C. chapter 31 for a period before discharge does not run while the servicemember remains on active duty, but begins on the date of discharge from the active military, naval, or air service. The period of eligibility requirements of this section are not applicable to provision of vocational rehabilitation services and assistance under chapter 31 during active duty.

(Authority: 38 U.S.C. 3102, 3103)

[75 FR 3166, Jan. 20, 2010]

### §21.42 Deferral or extension of the basic period of eligibility.

The basic period of eligibility does not run as long as any of the following reasons prevents the veteran from commencing or continuing a vocational rehabilitation program:

(a) *Qualifying compensable service-connected disability(ies) not established.* The basic period of eligibility does not commence until the day VA notifies a veteran of a rating determination by VA that the veteran has a qualifying compensable service-connected disability under § 21.40.

(Authority: 38 U.S.C. 3103(b)(3))

(b) *Character of discharge is a bar to benefits.* (1) The basic period of eligibility does not commence until the veteran meets the requirement of a discharge or release under conditions other than dishonorable. (For provisions regarding character of discharge, see § 3.12 of this chapter.)

(2) If VA has considered a veteran's character of discharge to be a bar to benefits, the basic period of eligibility commences only when one of the following happens:

(i) An appropriate authority changes the character of discharge or release; or

(ii) VA determines that the discharge or release was under conditions other than dishonorable or that the discharge or release was, but no longer is, a bar to benefits.

(3) If there is a change in the character of discharge, or the discharge or release otherwise is determined, as provided in paragraph (b)(2) of this section, not to be a bar to benefits, the beginning date of the basic period of eligibility will be the effective date of the change or VA determination.

(Authority: 38 U.S.C. 3103(b)(2))

(c) *Commencement or continuation of participation prevented by medical condition(s).* (1) The basic period of eligibility does not run during any period when a veteran's participation in a vocational rehabilitation program is determined to be infeasible for 30 days or more because of any medical condition(s) of the veteran, including the disabling effects of chronic alcoholism (see paragraphs (c)(2) through (c)(5) of this section).

(2) For purposes of this section, the term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations that:

(i) Have been diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Have been determined to prevent the affected veteran from beginning or continuing in a program of vocational rehabilitation and employment.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, or chronic alcohol abuse, in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injuries sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication are not considered disabling effects of chronic alcoholism. An injury itself, however, may prevent commencement or continuation of a rehabilitation program.

(5) For purposes of this section, after November 17, 1988, the disabling effects of chronic alcoholism do not constitute willful misconduct. See 38 U.S.C. 105(c).

(6) If the basic period of eligibility is delayed or interrupted under this paragraph (c) due to any medical condition(s) of the veteran, it will begin or resume on the date a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) notifies the veteran in writing that the CP or VRC has determined, based on the evidence of record, that participation in a vocational rehabilitation program is reasonably feasible for the veteran.

(Authority: 38 U.S.C. 3103(b)(1))

[75 FR 3166, Jan. 20, 2010]

### § 21.44 Extension of the basic period of eligibility for a veteran with a serious employment handicap.

(a) *Conditions for extension.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the basic period of eligibility of a veteran with a serious employment handicap when the veteran's current employment handicap and need for rehabilitation services and assistance necessitate an extension under the following conditions:

(1) *Not rehabilitated to the point of employability.* The veteran has not been

rehabilitated to the point of employability; or

(Authority: 38 U.S.C. 3103(c))

(2) *Rehabilitated to the point of employability*. The veteran was previously declared rehabilitated to the point of employability, but currently meets one of the following three conditions:

(i) One or more of the veteran's service-connected disabilities has worsened, preventing the veteran from working in the occupation for which he or she trained, or in a related occupation;

(ii) The veteran's current employment handicap and capabilities clearly show that the occupation for which the veteran previously trained is currently unsuitable; or

(iii) The occupational requirements in the occupation for which the veteran trained have changed to such an extent that additional services are necessary to enable the veteran to work in that occupation, or in a related field.

(Authority: 38 U.S.C. 3103(c))

(b) *Length of eligibility extension*. For a veteran with a serious employment handicap, a CP or VRC may extend the basic period of eligibility for such additional period as the CP or VRC determines is needed for the veteran to accomplish the purposes of his or her individualized rehabilitation program.

(Authority: 38 U.S.C. 3103(c))

[75 FR 3166, Jan. 20, 2010]

### §21.45 Extending the period of eligibility for a program of independent living beyond basic period of eligibility.

A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the period of eligibility for a veteran's program of independent living services beyond the veteran's basic period of eligibility if the CP or VRC determines that an extension is necessary for the veteran to achieve maximum independence in daily living. The extension may be for such period as the CP or VRC determines is needed for the veteran to achieve the goals of his or her program of independent living. (*See* §21.76(b) concerning duration of independent living services.)

(Authority: 38 U.S.C. 3103(d))

[75 FR 3166, Jan. 20, 2010]

### §21.46 Veteran ordered to active duty; extension of basic period of eligibility.

If VA determines that a veteran is prevented from participating in, or continuing in, a program of vocational rehabilitation as a result of being ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, the veteran's basic period of eligibility will be extended by the length of time the veteran serves on active duty plus 4 months.

(Authority: 38 U.S.C. 3103(e); sec. 308(h), Pub. L. 107–330, 116 Stat. 2829)

[75 FR 3168, Jan. 20, 2010]

### §21.47 Eligibility for employment assistance.

(a) *Providing employment services to veterans eligible for a rehabilitation program under chapter 31*. Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:

(1) Have completed a program of rehabilitation services under chapter 31 and been declared rehabilitated to the point of employability;

(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:

(i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and

(ii) Are employable; or

(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:

(i) Are employable or employed in a suitable occupation;

(ii) Have an employment handicap or a serious employment handicap; and

(iii) Need employment services to secure and/or maintain suitable employment.

(Authority: 38 U.S.C. 3102)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran meets the criteria for eligibility described in § 21.40; and

(4) The veteran has an employment handicap or serious employment handicap; and

(5) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least 90 days of post-secondary education or vocational training.

(Authority: 38 U.S.C. 3117)

(c) *Veteran never received vocational rehabilitation services from the Department of Veterans Affairs or under the Rehabilitation Act of 1973.* If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31.

(Authority: 38 U.S.C. 3117)

(d) *Duration of period of employment assistance.* The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§ 21.41 through 21.45 of this part, but entitlement to such assistance is, as provided in § 21.73 of this part, limited to 18 total months of assistance.

(Authority: 38 U.S.C. 3105)

[54 FR 21215, May 17, 1989, as amended at 56 FR 15836, Apr. 18, 1991; 75 FR 3165, Jan. 20, 2010]

### § 21.48 Severance of service-connection—reduction to noncompensable degree.

When a rating action is taken which proposes severance of service-connection or reduction to a noncompensable degree, the provisions of the following paragraphs will govern the veteran's entitlement to rehabilitation and employment assistance under 38 U.S.C. Chapter 31.

(a) *Applicant.* If the veteran is an applicant for rehabilitation or employment assistance when the proposed rating action is taken, all processes respecting determination of entitlement or induction into training shall be immediately suspended. In no event shall any veteran be inducted into a rehabilitation program or provided employment assistance during the interim periods provided in § 3.105 (d) and (e) of this title. If the proposed rating action becomes final, the application will be denied. See also § 21.50 as to initial evaluation.

(Authority: 38 U.S.C. 3104)

(b) *Reduction while in a rehabilitation program.* If the proposed rating action is taken while the veteran is in a rehabilitation program and results in a reduction to a noncompensable rating of his or her disability, the veteran may be retained in the program until the completion of the program, except if ''discontinued'' under § 21.198 he or she may not reenter.

(Authority: 38 U.S.C. 3103)

(c) *Severance while in a rehabilitation program.* If the proposed rating action

is taken while the veteran is in a rehabilitation program and results in severance of the service-connection of his or her disability, rehabilitation will be terminated effective as of the last day of the month in which severance of service-connection becomes final.

(Authority: 38 U.S.C. 3103)

INITIAL AND EXTENDED EVALUATION

**§21.50 Initial evaluation.**

(a) *Entitlement to an initial evaluation.* VA will provide an initial evaluation to an individual who:

(1) Applies for benefits under 38 U.S.C. chapter 31; and

(2) Meets the service-connected disability requirements of §21.40.

(Authority: 38 U.S.C. 3101(9), 3106)

(b) *Determinations to be made by VA during the initial evaluation.* A counseling psychologist (CP) or vocational rehabilitation counselor (VRC) will determine:

(1) Whether the individual has an employment handicap as determined in accordance with this section and §21.51;

(2) Whether an individual with an employment handicap has a serious employment handicap as determined in accordance with this section and §21.52; and

(3) Whether the achievement of a vocational goal is currently reasonably feasible as described in §21.53.

(Authority: 38 U.S.C. 3102, 3103)

(c) *Factors for assessment as part of the initial evaluation.* In making the determinations under paragraph (b) of this section, the following factors will be developed and assessed:

(1) The handicapping effects of the individual's service-connected and nonservice-connected disability(ies) on employability and on independence in daily living;

(2) The individual's physical and mental capabilities that may affect employability and ability to function independently in daily living activities in family and community;

(3) The impact of the individual's identified vocational impairments on the individual's ability to prepare for, obtain, and keep suitable employment;

(4) The individual's abilities, aptitudes, and interests;

(5) The individual's personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment); and

(6) Other factors that may affect the individual's employability.

(Authority: 38 U.S.C. 3106(a))

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (*see* §21.362, regarding satisfactory conduct and cooperation, and §21.364, regarding unsatisfactory conduct and cooperation).

(Authority: 38 U.S.C. 3111)

[72 FR 14042, Mar. 26, 2007, as amended at 75 FR 3165, Jan. 20, 2010]

**§21.51 Determining employment handicap.**

For the purposes of §21.50, an employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(a) *Vocational impairment.* The individual has a vocational impairment; that is, an impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests.

(b) *Effects of impairment not overcome.* The individual has not overcome the effects of the individual's impairment of employability through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This situation includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(c) *Contribution of the service-connected disability(ies) to the individual's overall vocational impairment.* (1) Except as provided in paragraph (c)(3) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap.

(2) When determining the individual's overall vocational impairment, the CP or VRC will consider the factors identified in § 21.50(c).

(3) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment.

(Authority: 38 U.S.C. 3101, 3102)

[72 FR 14042, Mar. 26, 2007]

### § 21.52 Determining serious employment handicap.

(a) *Requirements for determining serious employment handicap.* For each individual who is found to have an employment handicap, a CP or VRC must make a separate determination of whether the individual has a serious employment handicap. For the purposes of an initial evaluation under § 21.50, a serious employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(1) *Significant vocational impairment.* The individual has a significant vocational impairment; that is, a significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests, considering the factors described in § 21.50 and paragraph (b) of this section.

(2) *Effects of significant impairment not overcome.* The individual has not overcome the effects of the significant vocational impairment through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

(Authority: 38 U.S.C. 3101)

(ii) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall significant vocational impairment.

(b) *Factors for assessment during the initial evaluation, when determining whether a significant vocational impairment exists.* The combination of all restrictions and their effects on the individual define the extent of the vocational impairment and its significance. When determining whether the individual has a significant vocational impairment, VA will develop and assess the following factors and their effects:

(1) Number of disabling conditions;

(2) Severity of disabling condition(s);

(3) Existence of neuropsychiatric condition(s);

(4) Adequacy of education or training for suitable employment;

(5) Number, length, and frequency of periods of unemployment or underemployment;

(6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;

(7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;

(8) Negative attitudes toward individuals with disabilities and other evidence of restrictions on suitable employment, such as labor market conditions; discrimination based on age, race, gender, disability or other factors; alcoholism or other substance abuse; and

(9) Other factors that relate to preparing for, obtaining, or keeping employment consistent with the individual's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3102, 3106)

[72 FR 14043, Mar. 26, 2007]

### §21.53 Reasonable feasibility of achieving a vocational goal.

(a) *Requirement*. The Department of Veterans Affairs shall determine the reasonable feasibility of achieving a vocational goal in each case in which a veteran has either:

(1) An employment handicap, or

(2) A serious employment handicap.

(Authority: 38 U.S.C. 3106(a))

(b) *Definition*. The term *vocational goal* means a gainful employment status consistent with the veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(8))

(c) *Expeditious determination*. The determination of reasonable feasibility shall be made as expeditiously as possible when necessary information has been developed in the course of initial evaluation. If an extended evaluation is necessary as provided in §21.57 a decision of feasibility shall be made by the end of the extended evaluation. Any reasonable doubt shall be resolved in favor of a finding of feasibility.

(Authority: 38 U.S.C. 3105(d))

(d) *Vocational goal is reasonably feasible*. Achievement of a vocational goal is reasonably feasible for a veteran with either an employment or serious employment handicap when the following conditions are met:

(1) Vocational goal(s) has (have) been identified;

(2) The veteran's physical and mental conditions permit training for the goal(s) to begin within a reasonable period; and

(3) The veteran:

(i) Possesses the necessary educational skills and background to pursue the vocational goal; or

(ii) Will be provided services by the Department of Veterans Affairs to develop such necessary educational skills as part of the program.

(Authority: 38 U.S.C. 3104(a)(1), 3106(a))

(e) *Criteria for reasonable feasibility not met*. (1) When VA finds that the provisions of paragraph (d) of this section are not met, but VA has not determined that achievement of a vocational goal is not currently reasonably feasible, VA shall provide the rehabilitation services contained in §21.35(i)(1)(i) of this part as appropriate;

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 3104(a)(1), 3106(b))

(f) *Independent living services*. The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Employment (VR&E) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 3100)

(g) *Responsible staff*. A counseling psychologist in the Vocational Rehabilitation and Employment Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.

(Authority: 38 U.S.C. 3106(b), Pub. L. 99–576)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989]

**§ 21.57 Extended evaluation.**

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(Authority: 38 U.S.C. 3106(c), Pub. L. 99–576)

(b) *Scope of services.* During the extended evaluation, a veteran may be provided:

(1) Diagnostic and evaluative services;

(2) Services to improve his or her ability to attain a vocational goal;

(3) Services to improve his or her ability to live and function independently in the community;

(4) An allowance as provided in § 21.260.

(Authority: 38 U.S.C. 3104)

(c) *Determination.* (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;

(Authority: 38 U.S.C. 3106(d))

(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in § 21.84 of this part.

(Authority: 38 U.S.C. 3106(b))

(d) *Responsibility for determining the need for a period of extended evaluation.* A counseling psychologist in the Vocational Rehabilitation and Employment Division shall determine whether a period of extended evaluation is needed.

(Authority: 38 U.S.C. 3106(c))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 62 FR 17707, Apr. 11, 1997]

**§ 21.58 Redetermination of employment handicap and serious employment handicap.**

(a) *Prior to induction into a program.* A determination as to employment handicap, serious employment handicap, or eligibility for a program of employment services will not be changed except for:

(1) Unmistakable error in fact or law; or

(2) New and material evidence which justifies a change.

(b) *After induction into a program.* (1) The Department of Veterans Affairs will not redetermine a finding of employment handicap, serious employment handicap, or eligibility for a program of employment services subsequent to the veteran's induction into a program because of a reduction in his or her disability rating, including a reduction to 0 percent:

(2) The Department of Veterans Affairs may consider whether a finding of employment handicap should be changed to serious employment handicap when there is an increase in the degree of service-connected disability, or other significant change in the veteran's situation;

(3) A redetermination of employment handicap, serious employment handicap, or eligibility for a program of employment services will be made when there is a clear and unmistakable error of fact or law.

(Authority: 38 U.S.C. 3102, 3106)

(c) *Following rehabilitation or discontinuance.* A veteran's eligibility and entitlement to assistance must be redetermined in any case in which:

(1) The veteran is determined to be rehabilitated to the point of employability under the provisions of § 21.190;

(2) The veteran is determined to meet the requirements for rehabilitation under the provisions of § 21.196; or

(3) The veteran's program is discontinued under the provisions of § 21.198, except as described in § 21.198(c)(3).

(Authority: 38 U.S.C. 3102, 3111)

**§21.59 Review and appeal of decisions on eligibility and entitlement.**

A veteran may appeal decisions of the Vocational Rehabilitation and Employment staff on eligibility and entitlement to rehabilitation services to the Board of Veterans Appeals as provided in §19.2 of Title 38, CFR. However, the veteran or an accredited representative, on his or her behalf, may request administrative review by Central Office prior to filing an appeal to BVA. A case already on appeal to BVA may not be referred to Central Office for administrative review or advisory opinion.

(Authority: 38 U.S.C. 3107(c))

VOCATIONAL REHABILITATION PANEL

**§21.60 Vocational Rehabilitation Panel.**

(a) *Establishment of the Panel.* A Vocational Rehabilitation Panel will be established at each field facility by the facility head. The purpose of the Panel is to provide technical assistance in the planning of rehabilitation programs for seriously disabled veterans and dependents. This purpose will be most effectively carried out through use of the services of a wide range of professionals to bring the resources of the Department of Veterans Affairs and the community to bear on problems presented in the individual case.

(Authority: 38 U.S.C. 3104(a))

(b) *Composition of the Panel.* The Panel will include, but not be limited to the following:

(1) A counseling psychologist in the VR&E (Vocational Rehabilitation and Employment) Division as the chairperson;

(2) A vocational rehabilitation specialist in VR&E;

(3) A medical consultant from a Department of Veterans Affairs Medical Center;

(4) A member of the Social Services staff from a Department of Veterans Affairs Medical Center; and

(5) Other specialists from the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3104(a), 3115(a))

(c) *Appointment to the Panel.* (1) The VR&E (Vocational Rehabilitation and Employment) Officer may not serve as either chairperson or member of the Panel.

(2) The VR&E Officer will arrange for the participation of nonmedical professional staff in the Panel's meetings.

(Authority: 38 U.S.C. 3115(a)(2))

(d) *Scope of Panel review.* The Panel will review each case which has been referred to it in relation to:

(1) Specific reason for the referral; and

(2) Other problem areas which the Panel identifies in the course of its consideration of the case.

(e) *Referral.* A case may be referred to the Panel by:

(1) A counseling psychologist in VR&E;

(2) A vocational rehabilitation specialist in VR&E; or

(3) The VR&E officer.

(f) *Report.* The Panel must prepare a report on its findings and recommendations in each case. The Panel's recommendations may include specific actions which are warranted on the basis of current information, or may identify additional information needed to provide a sounder basis for planning the veteran's program of rehabilitation.

(Authority: 38 U.S.C. 3104(a))

**§21.62 Duties of the Vocational Rehabilitation Panel.**

(a) *Consultation requested.* The panel shall provide technical and consultative services when requested by professional staff of the Vocational Rehabilitation and Employment (VR&E) Division to:

(1) Assist staff members in planning and carrying out a rehabilitation plan for seriously disabled veterans and their dependents; and

(2) Consider other cases of individuals eligible for, or being provided assistance under chapter 31 and other programs of education and training administered by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3104(a))

(b) *Independent living services.* The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall review all cases which come before it to assure that the proposed program of vocational rehabilitation or independent living services includes those services necessary to enable the veteran to achieve the goals of the program.

(Authority: 38 U.S.C. 3100)

(c) *Dependents.* The specific duties of the Panel with respect to dependents are more fully described §§ 21.3300, 21.3301, 21.3304, 21.4105, and 21.4276 of this part.

(Authority: 38 U.S.C. 3536, 3540, 3541, 3542, 3543)

[54 FR 37332, Sept. 8, 1989]

DURATION OF REHABILITATION PROGRAMS

### § 21.70 Vocational rehabilitation.

(a) *General.* The goal of a vocational rehabilitation program is to:

(1) Evaluate and improve the veteran's ability to achieve a vocational goal;

(2) Provide services needed to qualify for suitable employment;

(3) Enable the veteran to achieve maximum independence in daily living;

(4) Enable the veteran to become employed in a suitable occupation and to maintain suitable employment.

(b) *Vocational rehabilitation program.* This term includes:

(1) The services that are needed for the accomplishment of the purposes of Chapter 31, including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Department of Veterans Affairs to be needed;

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible such needed services include:

(A) Determining whether a vocational goal is reasonably feasible;

(B) Improving the veteran's potential to participate in a program of services designed to achieve a vocational goal;

(C) Enabling the veteran to achieve maximum independence in daily living;

(ii) In the case of a veteran for whom achievement of a vocational goal is feasible, such needed services include assisting the veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment;

(2) The term also includes the monetary assistance authorized by Chapter 31 for a veteran receiving any of the services described in this paragraph.

(Authority: 38 U.S.C. 3101(9); Pub. L. 99–576)

(c) *Duration of vocational rehabilitation.* Decisions on the duration of periods for attaining the goals named in paragraph (a) of this section are made in the course of development and approval of the Individualized Written Rehabilitation Plan. However, the duration of a vocational rehabilitation program may not exceed 48 months (or its equivalent when pursued on a part-time basis), except as provided in § 21.78.

(Authority: 38 U.S.C. 3695, 3105)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 53 FR 50957, Dec. 19, 1988]

### § 21.72 Rehabilitation to the point of employability.

(a) *General.* Rehabilitation to the point of employability may include the services needed to:

(1) Evaluate and improve the veteran's ability to undertake training;

(2) Train the veteran to the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma, or certificate is generally necessary for entry into the occupation, e.g., an MSW for social work, the veteran shall be trained to that level.

(Authority: 38 U.S.C. 3101(5), 3104)

(b) *When duration of training may exceed general requirements*—(1) *Employment handicap.* If the amount of training necessary to qualify for employment in a particular occupation in a geographical area where a veteran lives or will seek employment exceeds the amount generally needed for employment in that occupation, the Department of Veterans Affairs will provide, or arrange for the necessary additional training.

(2) *Serious employment handicap.* The Department of Veterans Affairs will assist a veteran with a serious employment handicap to train to a higher level than is usually required to qualify in a particular occupation, when one of the following conditions exist:

(i) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for jobs or business, and the additional training will help to offset the competitive disadvantage;

(ii) The number of feasible occupations are restricted, and additional training will enhance the veteran's employability in one of those occupations;

(iii) The number of employment opportunities within feasible occupations are restricted.

(Authority: 38 U.S.C. 3105(c))

(c) *Responsibility for estimating duration of training.* (1) The counseling psychologist shall estimate the duration of training and the estimate shall be incorporated in the IWRP (Individualized Written Rehabilitation Plan). When the period of training is estimated to exceed 48 months, the concurrence of the Vocational Rehabilitation and Employment Officer is required, prior to approving the IWRP, under conditions listed in §21.78.

(2) The estimated duration of the period of training required to complete an original or amended IWRP may be extended when necessary. Authorization of an extension is the responsibility of the counseling psychologist, except as provided in paragraph (d) of this section. Any extension which will result in use of more than 48 months of entitlement must meet conditions described in §21.78.

(Authority: 38 U.S.C. 3695(b))

(d) *Extension of training by the vocational rehabilitation specialist.* (1) The VRS (Vocational Rehabilitation Specialist) may authorize an extension of up to six months of the period of vocational rehabilitation training authorized by the IWRP when:

(i) The veteran is in *rehabilitation to the point of employability* status under §21.190;

(ii) The veteran has completed more than half of the prescribed training;

(iii) The veteran is making satisfactory progress;

(iv) The extension is necessary to complete training;

(v) Training can be completed within six months; and

(vi) The extension will not result in use of more than 48 months of entitlement under Chapter 31 alone or in combination with other programs identified in §21.4020.

(2) If the conditions listed in paragraph (d)(1) of this section are not met, and an extension is needed to complete the program, the case will be referred to the counseling psychologist for a determination.

(Authority: 38 U.S.C. 3105(c))

### §21.73 Duration of employment assistance programs.

(a) *Duration.* Employment assistance may be provided to the veteran for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period shall not exceed 18 months. A veteran may be provided such assistance if he or she is eligible for employment assistance under the provisions of §21.47 of this part.

(Authority: 38 U.S.C. 3105(b))

(b) *Employment assistance not charged against Chapter 31 entitlement.* The period of employment assistance provided in paragraph (a) of this section is

not charged against the months of entitlement under Chapter 31 (see § 21.70).

(Authority: 38 U.S.C. 3105(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 21216, May 17, 1989]

### § 21.74 Extended evaluation.

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonably feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b) of this part.

(Authority: 38 U.S.C. 3105(a), 3106(a))

(b) *Duration.* An extended evaluation may not be for less than two weeks (full or part-time equivalent) nor for more than twelve months, unless a longer period is necessary to determine whether achievement of a vocational goal is reasonably feasible.

(Authority: 38 U.S.C. 3105(a))

(c) *Approval of the period of an extended evaluation.* (1) The counseling psychologist may approve an initial period of up to 12 months for an extended evaluation.

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocational Rehabilitation and Employment (VR&E) Officer before approving the extension of a period of extended evaluation.

(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the counseling psychologist if there is a substantial certainty that a determination of current feasibility may be made within this extended period. The concurrence of the VR&E Officer is also required for this extension.

(Authority: 38 U.S.C. 3105(a), 3106(b); Pub. L. 99–576)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 62 FR 17707, Apr. 11, 1997]

### § 21.76 Independent living.

(a) *General.* A program of independent living services may be authorized to enable the veteran to:

(1) Reach the goals of the program, and

(2) Maintain the newly achieved level of independence in daily living.

(Authority: 38 U.S.C. 3101(4), 3104(b))

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational Counseling and Rehabilitation Officer in this finding is required.

(Authority: 38 U.S.C. 3105(d))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 37332, Sept. 8, 1989]

### § 21.78 Approving more than 48 months of rehabilitation.

(a) *General.* Neither the basic period of entitlement which may be authorized for a program of rehabilitation under Chapter 31 alone, nor a combination of entitlement of Chapter 31 and other programs listed in § 21.4020 shall exceed 48 months except as indicated in paragraphs (b) and (c) of this section.

(Authority: 38 U.S.C. 3695)

(b) *Employment handicap.* A rehabilitation program for a veteran with an employment handicap may only be extended beyond 48 months when:

(1) The veteran previously completed training for a suitable occupation but the veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which training had been provided, and a period of

training in the same or a different field is required. An extension beyond 48 months under Chapter 31 alone shall be authorized for this purpose.

(Authority: 38 U.S.C. 3105(c)(1)(A))

(2) The occupation in which the veteran previously completed training is found to be unsuitable because of the veteran's abilities and employment handicap. An extension beyond 48 months under Chapter 31 alone shall be approved for this purpose.

(Authority: 38 U.S.C. 3105(c)(1)(B))

(3) The veteran previously used education benefit entitlement under other programs administered by VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(Authority: 38 U.S.C. 3695)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 educational assistance rate. The 48 month limitation may be exceeded only:

(i) To the extent that the entitlement in excess of 48 months does not exceed the entitlement previously used by the veteran in a course at the secondary school level under §21.4235 before December 31, 1989, or

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 3013, 3695; Pub. L. 98–525)

(5) The assistance to be provided in excess of 48 months consists only of a period of employment assistance (see §21.73).

(Authority: 38 U.S.C. 3105(b))

(c) *Serious employment handicap.* The duration of a rehabilitation program for a veteran with a serious employment handicap may be extended beyond 48 months under Chapter 31 for the number of months necessary to complete a rehabilitation program under the following conditions:

(1) To enable the veteran to complete a period of rehabilitation to the point of employability;

(2) To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months;

(3) To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services;

(4) Following rehabilitation to the point of employability:

(i) The veteran has been unable to secure employment in the occupation for which training has been provided despite intensive efforts on the part of the Department of Veterans Affairs and the veteran, and a period of retraining or additional training is needed;

(ii) The skills which the veteran developed in training for an occupation in which he or she was employed are no longer adequate to maintain employment in that field and a period of retraining is needed;

(iii) The veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which the veteran has been trained, and a period of training in the same or different field is required;

(iv) The occupation in which the veteran previously completed training is found to be unsuitable due to the veteran's abilities and employment handicap.

(5) The assistance to be provided in excess of 48 months consists, only of a

period of employment assistance. (see § 21.73).

(Authority: 38 U.S.C. 3105(c)(2))

(d) *Approval of extension beyond 48 months.* All extensions of a rehabilitation program beyond 48 months of total entitlement under all Department of Veterans Affairs programs requires the approval of the counseling psychologist and concurrence of the Vocational Rehabilitation and Employment Officer. Concurrence of the VR&E officer is not required for an extension due to provision of employment assistance (see § 21.21).

(Authority: 38 U.S.C. 3105(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

### § 21.79 Determining entitlement usage under Chapter 31.

(a) *General.* The determination of entitlement usage for chapter 31 participants is made under the provisions of this section except as provided in paragraph (f) of this section. Charges for entitlement usage shall be based upon the principle that a veteran who pursues a rehabilitation program for 1 day should be charged 1 day of entitlement. The determination of entitlement is based upon the rate at which the veteran pursues his or her rehabilitation program. The rate of pursuit is determined under the provisions of § 21.310 of this part.

(Authority: 38 U.S.C. 3108(d))

(b) *No charge against chapter 31 entitlement.* No charge will be made against chapter 31 entitlement under any of the following circumstances:

(1) The veteran is receiving employment services under an Individualized Employment Assistance Plan (IEAP);

(2) The veteran is receiving an employment adjustment allowance; or

(3) The veteran is on leave from his or her program, but leave is not authorized by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3108(d), 3117)

(c) *Periods during which entitlement may be charged.* Charges for usage of chapter 31 entitlement may only be made for program participants in one of the following case statuses:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living.

(Authority: 38 U.S.C. 3106, 3109)

(d) *Method of charging entitlement under chapter 31.* The Department of Veterans Affairs will make a charge against entitlement:

(1) On the basis of total elapsed time (1 day of entitlement for each day of pursuit) if the veteran is being provided a rehabilitation program on a full-time basis;

(2) On the basis of a proportionate rate of elapsed time if the veteran is being provided a rehabilitation program on a three-quarter, one-half or less than one-half time basis. Entitlement is charged at a:

(i) Three-quarter time rate if pursuit is three-quarters or more, but less than full-time;

(ii) One-half time rate if pursuit is half-time or more, but less than three-quarter time;

(iii) One-quarter time rate if pursuit is less than half-time. Measurement of pursuit on a one-quarter time basis is limited to veterans in independent living or extended evaluation programs.

(Authority: 38 U.S.C. 3108(d), 3680(g))

(e) *Computing entitlement.* (1) The computation of entitlement is based upon the rate of program pursuit, as determined under § 21.310 of this part, over the elapsed time during which training and rehabilitation services were furnished;

(2) The Department of Veterans Affairs will compute elapsed time from the commencing date of the rehabilitation program as determined under § 21.322 of this part to the date of termination as determined under § 21.324 of this part. This includes the period during which veterans not receiving subsistence allowance because of a statutory bar; e.g., certain incarcerated veterans or servicepersons in a military hospital, nevertheless, received other chapter 31 services and assistance. Elapsed time includes the total period from the commencing date until the

termination date, except for any period of unauthorized leave;

(3) If the veteran's rate of pursuit changes after the commencing date of the rehabilitation program, the Department of Veterans Affairs will:

(i) Separate the period of rehabilitation program services into the actual periods of time during which the veteran's rate of pursuit was different; and

(ii) Compute entitlement based on the rate of pursuit for each separate elapsed time period.

(Authority: 38 U.S.C. 3108(f))

(f) *Special situtations.* (1) When a chapter 31 participant elects benefits of the kind provided under chapter 30 or chapter 34 as a part of his or her rehabilitation program under chapter 31, the veteran's entitlement usage will be determined by using the entitlement provisions of those programs. Entitlement charges shall be in accordance with §21.7076 for chapter 30 and §21.1045 under chapter 34. The entitlement usage computed under these provisions is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against either chapter 30 or chapter 34.

(Authority: 38 U.S.C. 3108(f))

(2) When a chapter 31 participant elects to receive payment of the *Post-9/11 subsistence allowance* under §21.260(c) in lieu of a subsistence allowance under §21.260(b), the entitlement usage is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against chapter 33.

(Authority: 38 U.S.C. 3108(b))

(3) When a veteran is pursuing on-job training or work experience in a Federal agency on a nonpay or nominal pay basis, the amount of entitlement used is determined in the following manner:

(i) Entitlement used in on-job training in a Federal agency on a nonpay or nominal pay basis is determined in the same manner as other training.

(ii) Entitlement used in pursuing work experience will be computed in the same manner as for veterans in on-job training except that work experience may be pursued on a less than full-time basis. If the veteran is receiving work experience on a less than full-time basis, entitlement charges are based upon a proportionate amount of the workweek. For example, if the workweek is 40 hours, three-quarter time is at least 30 hours, but less than 40 hours, and half-time is at least 20 hours but less than 30 hours.

(Authority: 38 U.S.C. 3108(c))

(4) Entitlement is charged on a full-time basis for a veteran found to have a reduced work tolerance.

(Authority: 38 U.S.C. 3108(d), 3680(g))

(g) *Overpayment.* The Department of Veterans Affairs will make a charge against entitlement for an overpayment of subsistence allowance under the conditions described in §21.1045(h) of this part.

(Authority: 38 U.S.C. 3680(g))

[54 FR 47770, Nov. 17, 1989, as amended at 76 FR 45703, Aug. 1, 2011]

INDIVIDUALIZED WRITTEN REHABILITATION PLAN

**§21.80 Requirement for a rehabilitation plan.**

(a) *General.* An IWRP (Individualized Written Rehabilitation Plan) will be developed for each veteran eligible for rehabilitation services under Chapter 31. The plan is intended to assist in:

(1) Providing a structure which allows VR&E staff to translate the findings made in the course of the initial evaluation into specific rehabilitation goals and objectives;

(2) Monitoring the veteran's progress in achieving the rehabilitation goals established in the plan;

(3) Assuring the timeliness of assistance by Department of Veterans Affairs staff in providing services specified in the plan; and

(4) Evaluating the effectiveness of the planning and delivery of rehabilitation services by VR&E staff.

(b) *When a plan is prepared.* A plan will be prepared in each case in which a veteran will pursue:

(1) A vocational rehabilitation program, as that term is defined in §21.35(i);

(2) An extended evaluation program;

(3) An independent living services program; or

(4) An employment program.

(c) *Plan—a generic term.* The term *plan* refers to the IWRP (Individualized Written Rehabilitation Plan) § 21.84, IEEP (Individualized Extended Evaluation Plan) § 21.86, IEAP (Individualized Employment Assistance Plan) § 21.88, and IILP (Individualized Independent Living Plan) § 21.90.

(Authority: 38 U.S.C. 3107(a))

(d) *Plan not required.* A plan will not be prepared for a veteran who is not eligible for any assistance under Chapter 31. Department of Veterans Affairs staff, with the veteran's assistance and cooperation, will utilize information developed in the course of an initial evaluation to assist the veteran to develop alternatives for education and training, independence in daily living, or employment assistance. This assistance should help the veteran in achieving attainable vocational, independent living and employment goals utilizing benefits and services for which the veteran may be eligible under other Department of Veterans Affairs or non-Department of Veterans Affairs programs.

(Authority: 38 U.S.C. 523, 7722(c))

### § 21.82 Completing the plan under Chapter 31.

(a) *Serious employment handicap.* Each plan for a veteran with a serious employment handicap shall provide for completion of the program provided by the plan under Chapter 31. The provisions of §§ 21.70 and 21.78(c) are designed to enable a veteran with a serious employment handicap to pursue and complete a rehabilitation plan under Department of Veterans Affairs auspices. These provisions shall be used as necessary to accomplish the goals of the plan.

(Authority: 38 U.S.C. 3105(c), 3107)

(b) *Employment handicap.* A plan for a veteran with an employment handicap that is not a serious employment handicap shall require that the program be completed within 48 months, if the veteran is not eligible for an extension as provided in § 21.78. When the program provided by the plan cannot be completed under Chapter 31 because of limitations imposed by the veteran's termination date or months of remaining entitlement, realistic, comprehensive and detailed arrangements must be made which will enable the veteran to successfully complete training under other auspices. If an arrangement cannot be made which meets these requirements, the long-range vocational goal of the veteran must be reevaluated, and another vocational goal selected which can be completed using the veteran's remaining Chapter 31 resources.

(Authority: 38 U.S.C. 3107(a))

(c) *Employment assistance when training is not completed under Chapter 31.* A plan for employment assistance may be implemented even though the veteran's training has not been or will not be completed under Chapter 31.

(Authority: 38 U.S.C. 3117(a))

### § 21.84 Individualized written rehabilitation plan.

(a) *Purpose.* The purposes of the IWRP (Individualized Written Rehabilitation Plan) are to:

(1) Identify goals and objectives to be achieved by the veteran during the period of rehabilitation services that will lead to the point of employability;

(2) Plan for placement of the veteran in the occupational field for which training and other services will be provided; and

(3) Specify the key services needed by the veteran to achieve the goals and objectives of the plan.

(Authority: 38 U.S.C. 3107)

(b) *Elements of the plan.* A plan will include the following:

(1) A statement of long-range rehabilitation goals. Each statement of long-range goals shall include at a minimum:

(i) One vocational goal for a veteran with an employment handicap; or

(ii) One vocational goal and, if applicable, one independent living goal for a veteran with a serious employment handicap.

(2) Intermediate rehabilitation objectives; Intermediate objectives are statements of achievement expected of

the veteran to attain the long-range goal. The development of appropriate intermediate objectives is the cornerstone of an effective plan. Intermediate objectives should have the following characteristics:

(i) The activity specified relates to the achievement of the goal;

(ii) The activity specified is definable in terms of observable behavior (e.g., pursuing an A.A. degree);

(iii) The activity has a projected completion date;

(iv) The outcome desired upon completion is measurable (e.g., receiving an A.A. degree).

(3) The specific services to be provided by the Department of Veterans Affairs as stated. Counseling shall be included in all plans for a veteran with a serious employment handicap.

(4) The projected starting and completion dates of the planned services and the duration of each service;

(5) Objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved as set forth; and

(6) The name, location, and phone number of the VBA case manager.

(Authority: 38 U.S.C. 3107(a))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.86 Individualized extended evaluation plan.

(a) *Purpose*. The purpose of an IEEP is to identify the services needed for the VA to determine the veteran's current ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(Authority: 38 U.S.C. 3106(a), 3107(a))

(b) *Elements of the plan*. An IEEP shall include the same elements as an IWRP except that:

(1) The long range goal shall be to determine achievement of a vocational goal is currently reasonably feasible;

(2) The intermediate objectives relate to problems of questions which must be resolved for the VA to determine the current reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 3106(a), 3107(a))

[53 FR 50957, Dec. 19, 1988]

### § 21.88 Individualized employment assistance plan.

(a) *Purpose*. The purpose of the IEAP (Individualized Employment Assistance Plan) is to assure that a comprehensive, thoughtful approach is taken, enabling eligible veterans to secure suitable employment.

(Authority: 38 U.S.C. 3107)

(b) *Requirement for a plan*. An IEAP will be prepared:

(1) As part of an IWRP; or

(2) When the veteran is eligible for employment assistance under provisions of § 21.47.

(Authority: 38 U.S.C. 3107(a))

(c) *Elements of the plan*. The IEAP shall follow the same structure as the IWRP. Each IEAP will include full utilization of community resources to enable the veteran to:

(1) Secure employment; and

(2) Maintain employment.

(Authority: 38 U.S.C. 3117)

(d) *Preparation of the IEAP*. Preparation of the IEAP will be completed:

(1) No later than 60 days before the projected end of the period of rehabilitation services leading to the point of employability; or

(2) Following initial evaluation when employment services constitute the whole of the veteran's program under provisions of § 21.47.

(Authority: 38 U.S.C. 3107(a))

### § 21.90 Individualized independent living plan.

(a) *Purpose*. The purpose of the IILP is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not currently reasonably feasible, can become more independent in daily living within the family and community.

(Authority: 38 U.S.C. 3109, 3120)

(b) *Elements of the plan.* The IILP shall follow the same structure as the IWRP. The plan will include:

(1) Services which may be provided under Chapter 31 to achieve independence in daily living;

(Authority: 38 U.S.C. 3104)

(2) Utilization of programs with a demonstrated capacity to provide independent living services for severely handicapped persons;

(Authority: 38 U.S.C. 3104(b), 3120(a))

(3) Services provided under other Department of Veterans Affairs and non-Department of Veterans Affairs programs needed to achieve the goals of the plan;

(Authority: 38 U.S.C. 3107)

(4) Arrangements for maintaining the improved level of independence following completion of the plan.

(Authority: 38 U.S.C. 3107(a))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988]

### § 21.92 Preparation of the plan.

(a) *General.* The plan will be jointly developed by Department of Veterans Affairs staff and the veteran.

(b) *Approval of the plan.* The terms and conditions of the plan must be approved and agreed to by the counseling psychologist, the vocational rehabilitation specialist, and the veteran.

(c) *Implementation of the plan.* The vocational rehabilitation specialist or counseling psychologist designated as case manager has the primary role in carrying out Department of Veterans Affairs responsibility for implementation of the plan.

(d) *Responsible staff.* The counseling psychologist has the primary responsibility for the preparation of plans.

(Authority: 38 U.S.C. 3107(a))

### § 21.94 Changing the plan.

(a) *General.* The veteran, the counseling psychologist or the vocational rehabilitation specialist may request a change in the plan at any time.

(Authority: 38 U.S.C. 3107(b))

(b) *Long-range goals.* A change in the staement of a long-range goal may only be made following a reevaluation of the veteran's rehabilitation program by the counseling psychologist. A change may be made when:

(1) Achievement of the current goal(s) is no longer reasonably feasible; or

(2) The veteran's circumstances have changed or new information has been developed which makes rehabilitation more likely if a different long-range goal is established; and

(3) The veteran fully participates and concurs in the change.

(Authority: 38 U.S.C. 3107(b))

(c) *Intermediate objectives or services.* A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals. The veteran must concur in the change.

(Authority: 38 U.S.C. 3107(b))

(d) *Minor changes.* Minor changes in the plan (e.g., changing the date of a scheduled evaluation) by the case manager may be made without the participation and concurrence of the veteran.

(Authority: 38 U.S.C. 3107(b))

(e) *Changes in duration of the plan.* Any change in the total duration of a veteran's rehabilitation plan is subject to provisions on duration of a rehabilitation program described in §§ 21.70–21.78.

(Authority: 38 U.S.C. 3107(b))

### § 21.96 Review of the plan.

(a) *General.* The veteran's progress in reaching the goals of the plan will be reviewed and evaluated as scheduled in the plan by the case manager and the veteran.

(b) *Comprehensive review required.* The case manager and the veteran will review all of the terms of the plan and the veteran's progress at least every twelve months. On the basis of such review the veteran and the case manager will agree whether the plan should be:

(1) Retained in its current form;

(2) Amended; or

(3) Redeveloped.

(Authority: 38 U.S.C. 3107(b))

### § 21.98 Appeal of disagreement regarding development of, or change in, the plan.

(a) *General*. The veteran may request a review of a proposed, original, or amended plan when Department of Veterans Affairs staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a review of the plan must submit a written statement to the case manager which:

(1) Requests a review of the proposed, original, or amended plan; and

(2) Details his or her objections to the terms and conditions of the proposed, original, or amended plan.

(b) *Review by Vocational Rehabilitation and Employment Officer*. Upon receipt of the veteran's request for review of the plan, the counseling psychologist or the case manager will forward the request together with relevant comment to the VR&E Officer who will:

(1) Review relevant information; and

(2) Inform the veteran of his or her decision within 90 days.

(c) *Review by Director, Vocational Rehabilitation and Employment Service*. The veteran's request shall be reviewed by the Director, VR&E in any case in which the VR&E Officer is the case manager. The veteran will be informed of the decision within 90 days.

(d) *Appeal to the Board of Veterans Appeals*. The veteran may appeal an adverse decision of the VR&E Officer, or the Director, VR&E to the Board of Veterans Appeals.

(Authority: 38 U.S.C. 3107(c))

[49 FR 40814, Oct. 18, 1984, as amended at 62 FR 17708, Apr. 11, 1997]

COUNSELING

### § 21.100 Counseling.

(a) *General*. A veteran requesting or being furnished assistance under Chapter 31 shall be provided professional counseling services by Vocational Rehabilitation and Employment (VR&E) Service and other staff as necessary to:

(1) Carry out an initial evaluation in each case in which assistance is requested;

(2) Develop a rehabilitation plan or plan for employment services in each case in which the veteran is found during the initial evaluation to be eligible and entitled to services;

(3) Assist veterans found ineligible for services under Chapter 31 to the extent provided in § 21.82; and

(4) Try to overcome problems which arise during the course of the veteran's rehabilitation program or program of employment services.

(Authority: 38 U.S.C. 3101)

(b) *Types of counseling services*. VA will furnish comprehensive counseling services, including but not limited to

(1) Psychological;

(2) Vocational;

(3) Personal adjustment;

(4) Employment;

(5) Educational.

(Authority: 38 U.S.C. 3104(a)(2))

(c) *Qualifications*. Counseling services may only be furnished by VA or other personnel who meet requirements established under provisions of § 21.380 and other policies of the VA pertaining to the qualifications of staff providing assistance under Chapter 31.

(Authority: 38 U.S.C. 3118)

(d) *Limitations*. (1) If a veteran resides within a State, counseling services necessary to carry out the initial evaluation and the development of a rehabilitation plan or a program of employment services will be furnished by counseling psychologists in the Vocational Rehabilitation and Employment (VR&E) Division;

(2) If a veteran does not reside in a State the counseling services necessary to carry out an initial evaluation may be accomplished in the same manner as for a veteran residing in a State or through other arrangements when deemed appropriate by the VR&E Division. These alternative arrangements include, but are not limited to:

(i) Use of counseling centers or individual qualified professionals under contract to VA; and

(ii) Professional staff of other Federal agencies located in the area in which the veteran resides.

(3) Alternative arrangements to provide counseling are subject to the following requirements:

(i) All arrangements must be consistent with the provisions of paragraph (c) of this section regarding utilization of professionally qualified persons to provide counseling services during the initial evaluation;

(ii) All determinations of eligibility, entitlement and the development of a rehabilitation plan will continue to be made by counseling psychologists in the VR&E Division.

(4) If a counseling psychologist in the VR&E Division determines that the evidence of record is insufficient to carry out an initial evaluation in a case in which alternative arrangements were used, VA staff may authorize the veteran to travel to a VA facility to complete the evaluation.

(Authority: 38 U.S.C. 3118(c))

(e) *Definition*. For the purposes of this section, the term *State* means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 38 U.S.C. 101(20))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 32071, Aug. 4, 1989; 62 FR 17708, Apr. 11, 1997]

EDUCATIONAL AND VOCATIONAL TRAINING SERVICES

### § 21.120 Educational and vocational training services.

(a) *Purposes*. The purposes of providing educational and vocational training services are to enable a veteran eligible for, and entitled to, services and assistance under Chapter 31 to:

(1) Meet the requirements for employment in the occupational objective established in the IWRP (Individualized Written Rehabilitation Plan);

(2) Provide incidental training which is necessary to achieve the employment objective in the IEAP (Individualized Employment Assistance Plan);

(3) Provide incidental training needed to achieve the goals of an IILP (Individualized Independent Living Plan); or

(4) Provide training services necessary to implement an IEEP (Individualized Extended Evaluation Plan).

(b) *Selection of courses*. VA will generally select courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment. If such courses are not available in the area in which the veteran resides, or if they are available but not accessible to the veteran, other arrangements may be made. Such arrangements may include, but are not limited to:

(1) Relocation of the veteran to another area in which necessary services are available, or

(2) Use of an individual instructor to provide necessary training.

(Authority: 38 U.S.C. 3107)

(c) *Charges for education and training services*. The cost of education and training services will be one of the factors considered in selecting a facility when:

(1) There is more than one facility in the area in which the veteran resides which:

(i) Meets requirements for approval under §§ 21.292 through 21.298;

(ii) Can provide the education and training services, and other supportive services specified in the veteran's plan; and

(iii) Is within reasonable commuting distance; or

(2) The veteran wishes to train at a suitable facility in another area, even though training can be provided at a suitable facility in the area in which the veteran resides.

(Authority: 38 U.S.C. 3104(a)(7), 3115(a))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.122 School course.

(a) *Explanation of terms—schools, educational institution, and institution*. These terms mean any public or private school, secondary school, vocational school, correspondence school, business school, junior college, teacher's college, college, normal school, professional school, university, scientific or technical institution, or

other institution funishing education for adults.

(Authority: 38 U.S.C. 501(a), 3104)

(b) *Course.* A course generally consists of a number of areas of subject matter which are organized into learning units for the purpose of attaining a specific educational or vocational objective. Organized instruction in the units comprising the course is offered within a given period of time and credit toward graduation or certification is generally given.

(Authority: 38 U.S.C. 3104(a)(7))

(c) *School course.* A *school course* is a course as defined in paragraph (b) of this section offered by a facility identified in paragraph (a) of this section.

(Authority: 38 U.S.C. 3115)

**§ 21.123 On-job course.**

(a) *Training establishment.* This term means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any state apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal government authorized to supervise such training.

(b) *On-job course,* An on-job course is pursued toward a specified vocational objective, provided by a training establishment. The trainee learns, in the course of work performed under supervision, primarily by receiving formal instruction, observing practical demonstration of work tasks, and assisting in those tasks. Productive work should gradually increase with greater independence from formal instruction as the course progresses.

(Authority: 38 U.S.C. 501(a), 3104)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

**§ 21.124 Combination course.**

(a) *General.* A combination course is a course which combines training on the job with training in school. For the purpose of VA vocational rehabilitation, a course will be considered to be a combination course, if the student spends full-time on the job and one or more times a week also attends school on a part-tme basis. A veteran may pursue the components of a combination course in the following manner:

(1) Concurrent school and on-job training;

(2) Primarily on-job with some related instruction in school;

(3) In a school as a preparatory course to entering on-job training; or

(4) First training on-job followed by the school portion.

(b) *Cooperative course.* A cooperative course is a special type of combination course which usually:

(1) Has an objective which the student attains primarily through school instruction with the on-job portion being supplemental to the school course;

(2) Is at the college or junior college level although some cooperative courses are offered at post-secondary schools which do not offer a college degree or at secondary schools;

(3) Requires the student to devote at least one-half of the total training period to the school portion of the course; and

(4) Includes relatively long periods each of training on the job and in school such as a full term in school followed by a full term on the job.

(Authority: 38 U.S.C. 3104(a)(7))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

**§ 21.126 Farm cooperative course.**

(a) *Definition.* An approvable farm cooperative course is a full-time course designated to restore employability by training a veteran to:

(1) Operate a farm which he or she owns or leases; or

(2) Manage a farm as the employee of another.

(b) *Reaching the goal of a farm cooperative course.* The farm cooperative course must enable a veteran to become proficient in the type of farming for which he or she is being provided rehabilitation services. The areas in which proficiency is to be established include:

(1) Planning;

(2) Producing;

(3) Marketing;

(4) Maintaining farm equipment;

(5) Conserving farm resources;

(6) Financing the farm;

(7) Managing the farm; and

(8) Keeping farm and home accounts.

(c) *Instruction, including organized group instruction.* Instruction in a farm cooperative course may be by a mixture of organized group (classroom) instruction and individual instruction or by individual instruction alone. A course which includes organized group instruction must meet the following criteria to be considered as full-time:

(1) The number of clock hours of instruction which should be provided yearly shall meet the requirements of §§ 21.310(a)(4) and 21.4264 pertaining to full-time pursuit of a farm cooperative course:

(2) The individual instructor portion of a farm cooperative course shall include at least 100 hours of individual instruction per year.

(d) *Instruction given solely by an individual instructor.* (1) Instruction in a farm cooperative course may be given solely by an individual instructor if organized group instruction is:

(i) Not available within reasonable commuting distance of the veteran's farm; or

(ii) The major portion of the organized group instruction that is available does not have a direct relation to the veteran's farming operation and pertinent VA records are fully and clearly documented accordingly.

(2) To be considered full-time pursuit the individual instruction provided in these course must:

(i) Consist of at least 200 hours of instruction per year;

(ii) Be given by a fully qualified individual instructor by contract between VA and the instructor or an educational agency which employs the instructor.

(e) *Plan requirements for farm operator or farm manager.* (1) The plan for training developed by the case manager and the veteran in collaboration with the instructor must include:

(i) A complete written survey including but not limited to the areas identified in § 21.298 (a) and (b);

(ii) An overall, long-term plan based upon the survey of the operation of the farm;

(iii) An annual plan identifying the part of the overall plan to be implemented which will be prepared before the beginning of each crop year; and

(iv) A detailed individual training program showing the kind and amount of instruction, classroom and individual, or individual; and

(2) The farm must meet the requirements for selecting a farm found in § 21.298.

(Authority: 38 U.S.C. 3104(a)(7))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.128 Independent study course.

A veteran may pursue a course by independent study under the following conditions:

(a) *College level.* The course is offered by a college or university.

(b) *College degree.* The course leads to or is fully creditable towards a standard college degree.

(c) *Course content.* The course consists of a prescribed program of study with provision for interaction between the student and regularly employed faculty of the university or college by mail, telephone, personally, or class attendance.

(d) *School responsibility.* The university or college:

(1) Evaluates the course in semester or quarter hours or the equivalent; and

(2) Prescribes a period for completion.

(Authority: 38 U.S.C. 3104(a)(7))

### § 21.129 Home study course.

(a) *Definition.* A *home study* course is a course conducted by mail, consisting of a series of written lesson assignments furnished by a school to the student for study and preparation of written answers, solutions to problems, and work projects which are corrected and graded by the school and returned to the trainee.

(b) *Limitations on inclusion of home study courses, in rehabilitation plans.* A veteran and his or her case manager may include a home study course in a

rehabilitation plan only when it supplements the major part of the program. The purpose of the home study course is to provide the veteran with theory or technical information directly related to the practice of the occupation for which the veteran is training.

(Authority: 38 U.S.C. 3104(a)(7))

### § 21.130 Educational and vocational courses outside the United States.

(a) *General.* VA may provide educational and vocational courses outside a State if the case manager determines that such training is in the best interest of the veteran and the Federal Government.

(b) *Specific conditions.* (1) The training must be necessary to enable the veteran to qualify for, obtain, and retain suitable employment in the occupational objective; and

(2) Either:

(i) The training is not available in the United States; or

(ii) The training is available in the United States, but personal hardship would result from requiring that the veteran pursue training in this country; and

(3) All necessary supportive and follow-up services, including medical care and treatment and employment services, reasonably can be provided by or through VA, considering such factors as the availability, accessibility and cost of such services.

(Authority: 38 U.S.C. 3114)

[49 FR 40814, Oct. 18, 1984, as amended at 55 FR 27822, July 6, 1990]

### § 21.132 Repetition of the course.

(a) *Repeating all or part of the course.* A veteran, having completed a course under Chapter 31 according to the standards and practices of the institution, ordinarily will not pursue it again at the expense of VA. However, VA may approve repetition of all, or any part of the course when VA determines that the repetition is necessary to accomplish the veteran's vocational rehabilitation. A veteran repeating a course under Chapter 31 is subject to the same requirements for satisfactory pursuit and completion of the course as are other veterans taking the course unless a longer period is needed because of the veteran's reduced work tolerance.

(Authority: 38 U.S.C. 3104(a)(7))

(b) *Review course.* A veteran who has completed a course of training under Chapter 31 may pursue a review course, such as a bar review course, if it is specifically organized and conducted as a review course.

(Authority: 38 U.S.C. 3104(a)(7))

(c) *Auditing a subject.* Auditing, as defined in § 21.4200(i), may not be authorized as a part of any rehabilitation plan. However, if an individual repeats a course under the conditions described in paragraph (a) of this section, the course shall not be considered an audited course, if pursued in the same manner as a subject offered for credit. The individual must meet the same requirements as other students, and not be a mere listener.

(Authority: 38 U.S.C. 3680(a))

### § 21.134 Limitation on flight training.

Flight Training approved under chapter 31 may only be authorized in degree curriculums in the field of aviation that include required flight training. This type of training is otherwise subject to the same limitations as are applicable to flight training under Chapter 30.

(Authority: 38 U.S.C. 3680A(b))

[57 FR 57108, Dec. 3, 1992]

## SPECIAL REHABILITATION SERVICES

### § 21.140 Evaluation and improvement of rehabilitation potential.

(a) *General.* The purposes of these services are to:

(1) Evaluate if the veteran:

(i) Has an employment handicap;

(ii) Has a serious employment handicap; and

(iii) Is reasonably feasible for a vocational goal or an independent living goal.

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the veteran's potential for vocational rehabilitation or independent living;

(ii) A suitable vocational rehabilitation program; or

(iii) A suitable independent living program.

(3) Reevaluate the vocational rehabilitation or independent living potential of a veteran participating in a rehabilitation program under Chapter 31, as necessary.

(4) Enable a veteran to achieve:

(i) A vocational goal; or

(ii) An independent living goal.

(Authority: 38 U.S.C. 3104)

(b) *Periods during which evaluation and improvement services may be provided.* Evaluation and improvement services may be provided concurrently, whenever necessary, with a period of rehabilitation services, including:

(1) Initial evaluation or reevaluation;

(2) Extended evaluation:

(3) Rehabilitation to the point of employability:

(4) A program of independent living services: or

(5) Employment services, incidental to obtaining or maintaining employment.

(c) *Duration of full-time assistance.* If evaluation and improvement services are furnished on a full-time basis as a preliminary part of the period of rehabilitation to the point of employability, or as the vocational rehabilitation program, the duration of such assistance may not exceed 12 months, except as provided in § 21.74(c).

(Authority: 38 U.S.C. 3105)

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Medical care and treatment;

(4) Independent living services;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services.

(Authority: 38 U.S.C. 3104(a)(1), (6), (9), (10), (15))

**§ 21.142 Adult basic education.**

(a) *Definition.* The term *adult basic education* means an instructional program for the undereducated adult planned around those basic and specific skills most needed to help him or her to function adequately in society.

(b) *Purposes.* The purposes of providing adult basic education are to:

(1) Upgrade a veteran's basic educational skills;

(2) Provide refresher training; or

(3) Remedy deficiencies which prevent the veteran from undertaking a course of education or vocational training.

(c) *Periods during which basic adult education may be provided.* Basic adult education may be authorized, as necessary, during;

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; and

(3) Independent living services.

(Authority: 38 U.S.C. 3104(a)(1))

**§ 21.144 Vocational course in a sheltered workshop or rehabilitation facility.**

(a) *General.* A vocational course in a sheltered workshop or rehabilitation facility may be an institutional, on-job, or combination course which has been modified to facilitate successful pursuit by a person with a disability that would otherwise prevent or impair the person's participation in the course.

(b) *Authorization.* A vocational course in a sheltered workshop or rehabilitation facility may be authorized when the training offered is a sound method of restoring a veteran's employability.

(Authority: 38 U.S.C. 3104(a)(7))

**§ 21.146 Independent instructor course.**

(a) *Definition.* An independent instructor course is a full-time course of vocational training which the veteran pursues with an individual instructor, who, independently of a training institution or on-job training establishment, furnishes and conducts a vocational course at a suitable place of training.

(b) *Limitations on including an independent instructor course in a rehabilitation plan.* A veteran and his or her case manager may include an independent instructor course in a rehabilitation plan, other than one involving a farm cooperative program, only when either or both of the following conditions exist:

(1) Training is not available through an established school, on-job training establishment, rehabilitation facility or sheltered workshop within a reasonable commuting distance from the veteran's home; or

(2) The veteran's condition or other circumstances do not permit the veteran to attend an otherwise suitable facility within commuting distance. See § 21.126.

(c) *Training in the home.* Training in the home is a specialized type of independent instructor course which the veteran pursues in his or her home if:

(1) He or she is unable to pursue training at an otherwise suitable facility because of the effects of his or her disability;

(2) Based on proper medical opinion, the veteran is able to pursue the prescribed training; and

(3) The veteran's home provides a favorable educational environment with adequate work and study space.

(d) *Planning an individual instructor course.* The case manager, the veteran, and the instructor should jointly plan the training program for a veteran for whom an independent instructor course is prescribed.

(e) *Assuring employment.* Since the customary channels leading to employment may not be readily available to a veteran requiring an individual instructor course, the IEAP (Individual Employment Assistance Plan) shall indicate thorough consideration of plans and prospects for seeking and obtaining employment, including self-employment, upon completion of training.

(f) *Rate of pursuit.* A veteran in an independent instructor program shall pursue training at a rate comparable to the rate at which similar training is pursued on an institutional basis, unless the veteran's work tolerance is reduced by the effects of his or her disability.

(Authority: 38 U.S.C. 3104(a)(7))

**§ 21.148 Tutorial assistance.**

(a) *General.* A veteran may be provided individualized tutorial assistance, if VA determines that special assistance beyond that ordinarily given by the facility to students pursuing the same or a similar subject is needed to correct a deficiency in a subject.

(b) *Authorization of tutorial assistance.* Tutorial assistance may be provided during any period of rehabilitation services authorized by VA.

(Authority: 38 U.S.C. 3104(a)(7))

(c) *Use of relatives precluded.* Tutorial assistance at VA expense may not be provided by a relative of the veteran. The term *relative* has the same meaning as under § 21.374 pertaining to the use of a relative as an attendant.

(Authority: 38 U.S.C. 3492)

(d) *Payment at the Chapter 30 rate.* If a veteran has elected payment at the educational assistance rate payable under Chapter 30, he or she may not be provided individualized tutorial assistance under provision of Chapter 31. (See § 21.334.)

(Authority: 38 U.S.C. 3108(f))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

**§ 21.150 Reader service.**

(a) *Limitations on vision.* A veteran considered to have a visual impairment necessitating reader service includes a veteran:

(1) Whose best corrected vision is 20/200 in both eyes;

(2) Whose central vision is greater than 20/200 but whose field of vision is limited to such an extent that the widest diameter of a visual field subtends to an angle no greater than 20 degrees; or

(3) With impaired vision, whose condition or prognosis indicates that the residual sight will be adversely affected by the use of his or her eyes for reading.

(b) *Periods during which reader service may be provided.* reader service necessary to the development of a rehabilitation plan, or the successful pursuit of a rehabilitation program may be provided during:

(1) Initial evaluation or reevaluation;

(2) Extended evaluation;

(3) Rehabilitation to the point of employability;

(4) Independent living services; or

(5) Employment services, including an initial employment period of up to three months.

(c) *Reader responsibility.* The reader should be able to do more than read to the veteran. The reader should have an understanding of the subject matter based upon prior training or experience which allows him or her to:

(1) Read printed material with understanding; and

(2) Test the veteran's understanding of what has been read.

(d) *Extent of service.* The number of hours of service will be determined in each case by the amount of reading necessitated by the course and the efficacy of other equipment with which the veteran has been furnished to enable him or her to read printed material unassisted.

(e) *Recording.* VA will not normally pay for recording textbooks or other materials as a part of reader services, since excellent recording services are provided by volunteer organizations at no cost.

(f) *Selecting a relative as a reader.* Utilization of a relative of the veteran as a reader is subject to the limitations on use of a relative as an attendant under § 21.374.

(Authority: 38 U.S.C. 3104(a)(14))

### § 21.152 Interpreter service for the hearing impaired.

(a) *General.* The main purpose of interpreter service for the hearing impaired is to facilitate instructor-student communication. VA will provide interpreter service as necessary for the development and pursuit of a rehabilitation program. This service will be provided if:

(1) A VA physician determines that:

(i) The veteran is deaf or his or her hearing is severely impaired; and

(ii) All appropriate services and aids have been furnished to improve the veteran's residual hearing; or

(2) A VA physician determines that the veteran:

(i) Can benefit from language and speech training; and

(ii) Agrees to undertake language and speech training.

(b) *Periods during which interpreter service may be provided.* Interpreter service may be furnished during:

(1) Initial evaluation or reevaluation;

(2) Extended evaluation;

(3) Rehabilitation to the point of employability;

(4) Independent living services; or

(5) Employment services, including the first three months of employment.

(c) *Selecting the interpreter.* Only certified interpreters or persons meeting generally accepted standards for interpreters shall provide interpreter service. When an individual is not certified by a State or professional association, VA shall seek the assistance of a State certifying agency or a professional association in ascertaining whether the individual is qualified to serve as an interpreter.

(Authority: 38 U.S.C. 3104(a)(14))

(d) *Relatives.* Interpreter service at VA expense may not be provided by a relative of the veteran. The term *relative* has the same meaning as under § 21.374 pertaining to the use of relatives as attendants.

(Authority: 38 U.S.C. 3492)

### § 21.154 Special transportation assistance.

(a) *General.* A veteran, who because of the effects of disability has transportation expenses in addition to those incurred by persons not so disabled, shall be provided a transportation allowance to defray such additional expenses. The assistance provided in this section is in addition to provisions for interregional and intraregional travel which may be authorized under provisions of §§ 21.370 through 21.376.

(Authority: 38 U.S.C. 3104(a)(13))

(b) *Periods during which special transportation allowance may be provided.* A

special transportation allowance may be provided during:

(1) Extended evaluation;

(2) Rehabilitation to the point of employability;

(3) Independent living services; or

(4) Employment services, including the first three months of employment.

(Authority: 38 U.S.C. 3104(a)(14))

(c) *Scope of transportation assistance.* (1) Transportation assistance includes mileage, parking fees, reasonable fee for a driver, transportation furnished by a rehabilitation facility or sheltered workshop, and other reasonable expenses which may be incurred in local travel;

(2) The veteran's monthly transportation allowance may not exceed the lesser of actual expenses incurred or one-half of the subsistence allowance of a single veteran in full-time institutional training, unless extraordinary arrangements, such as transportation by ambulance, are necessary to enable a veteran to pursue a rehabilitation program.

(d) *Determining the need for a transportation allowance.* The case manager will determine the need for a transportation allowance. The assistance of a medical consultant shall be utilized, as necessary, to determine the need for special transportation assistance and to develop transportation arrangements which do not unduly tax the veteran's ability to travel and pursue a rehabilitation program.

(e) *Use of a relative precluded.* A relative of the veteran may not be paid any part of a special transportation allowance. The term *relative* has the same meaning as under § 21.374 pertaining to the use of a relative as an attendant.

(Authority: 38 U.S.C. 3104(a)(13))

### § 21.155 Services to a veteran's family.

(a) *General.* VA shall provide services to a veteran's family which are necessary to the implementation of the veteran's rehabilitation plan. The term *family* includes the veteran's immediate family, legal guardian, or any individual in whose home the veteran certifies an intention to live.

(b) *Scope of services to a veteran's family.* The services which may be furnished to the family are generally limited to consultation, homecare training, counseling, and mental health services of brief duration which are designed to enable the family to cope with the veteran's needs. Extended medical, psychiatric or other services may not be furnished to family members under these provisions.

(c) *Providing services to a veteran's family.* VR&E Staff will:

(1) Identify services which family members may need to facilitate the rehabilitation of the veteran; and

(2) Arrange for provision of the services which have been identified.

(d) *Resources for provision of services to family members.* (1) The established program and services which are furnished by Veterans Health Administration (VHA) to family members of veterans eligible for Chapter 31 should be used to the extent practicable; but

(2) If services are not readily available through regular VHA programs, necessary services will normally be secured through arrangements with other public and nonprofit agencies.

(Authority: 38 U.S.C. 3104(a)(11))

[49 FR 40814, Oct. 18, 1984, as amended at 62 FR 17708, Apr. 11, 1997]

### § 21.156 Other incidental goods and services.

(a) *General.* Other incidental goods and services may be authorized if the case manager determines them to be necessary to implement the veteran's rehabilitation plan. For example, a calculator may be authorized for a veteran pursuing an engineering degree, even though the veteran may not be required to have a calculator for any specific subject in his or her course, where there is substantial evidence that lack of a calculator places the veteran at a distinct disadvantage in successfully pursuing the course.

(b) *Limitation on cost.* The costs of incidental goods and services normally should not exceed five percent of training costs for any twelve-month period.

(Authority: 38 U.S.C. 3104(a)(10))

INDEPENDENT LIVING SERVICES

### § 21.160 Independent living services.

(a) *Purpose*. The purpose of independent living services is to assist eligible veterans whose ability to function independently in family, community, or employment is so limited by the severity of disability (service and nonservice-connected) that vocational or rehabilitation services need to be appreciably more extensive than for less disabled veterans.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(b) *Definitions*. The term *independence in daily living* means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within the veteran's family and community.

(Authority: 38 U.S.C. 3101(2))

(c) *Situations under which independent living services may be furnished*. Independent living services may be furnished:

(1) As part of a program to achieve rehabilitation to the point of employability;

(2) As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal;

(3) Incidental to a program of employment services; or

(4) As a program of rehabilitation services for eligible veterans for whom achievement of a vocational goal is not currently reasonably feasible. This program of rehabilitation services may be furnished to help the veteran:

(i) Function more independently in the family and community without the assistance of others or a reduced level of the assistance of others;

(ii) Become reasonably feasible for a vocational rehabilitation program; or

(iii) Become reasonably feasible for extended evaluation.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(d) *Services which may be authorized*. The services which may be authorized as part of an IILP (Individualized Independent Living Plan) include:

(1) Any appropriate service which may be authorized for a vocational rehabilitation program as that term is defined in § 21.35(i), except for a course of education or training as described in § 21.120; and

(2) Independent living services offered by approved independent living centers and programs which are determined to be necessary to carry out the veteran's plan including:

(i) Evaluation of independent living potential;

(ii) Training in independent living skills;

(iii) Attendant care;

(iv) Health maintenance programs; and

(v) Identifying appropriate housing accommodations.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(e) Coordination with other VA elements and other Federal, State, and local programs. Implementation of programs of independent living services and assistance will generally require extensive coordination with other VA and non-VA programs. If appropriate arrangements cannot be made to provide these services through VA, other governmental, private nonprofit and for-profit agencies and facilities may be used to secure necessary services if the requirements contained in § 21.294 are met.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3115, 3120)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 55 FR 42186, Oct. 18, 1990]

### § 21.162 Participation in a program of independent living services.

(a) *Approval of a program of independent living services*. A program of independent living services and assistance is approved when:

(1) The VA determines that achievement of a vocational goal is not currently reasonably feasible;

(2) The VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;

(3) All steps required by §§ 21.90 and 21.92 of this part for the development and preparation of an Individualized

Independent Living Plan (IILP) have been completed; and

(4) The VR&E Officer concurs in the IILP.

(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(b) *Considerations for the VR&E Officer*. The VR&E Officer will consider the following factors in administering programs providing independent living services:

(1) If VA resources available limit the number of veterans who may be provided a program of independent living services and assistance, the first priority shall be given to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of service-connected disability; and

(2) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA medical centers and nursing homes.

(Authority: 38 U.S.C. 3120(c))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 55 FR 48842, Nov. 23, 1990; 62 FR 17708, Apr. 11, 1997]

CASE STATUS

**§ 21.180 Case status system.**

(a) *General*. Each veteran's case will be assigned to a specific case status from the point of initial contact until all appropriate steps in the rehabilitation process have been completed. The case status system will:

(1) Assist VR&E staff to fulfill its case management responsibility to provide authorized assistance to enable the veteran to successfully pursue his or her program; and

(2) Assure program management and accountability.

(Authority: 38 U.S.C. 3107)

(b) *Responsibility for change of case status*. The case manager is responsible for assigning a case to the appropriate case status at each point in the rehabilitation process.

(c) *Case manager*. The VR&E (Vocational Rehabilitation and Employment) Officer or his or her designee will assign a case manager when the veteran's case is placed in *evaluation and planning* status. The VR&E Officer or his or her designee may assign case management responsibility for development and implementation of a rehabilitation plan authorized under Chapter 31 to a counseling psychologist or vocational rehabilitation specialist in the VR&E Division. The case manager assigned will, unless replaced by the VR&E Officer, continue to be responsible for case management throughout the course of the veteran's rehabilitation program. When securing medical care, treatment, and other related services, the VR&E case manager will coordinate with Veterans Health Administration (VHA) staff members who have case management responsibility for the veteran.

(Authority: 38 U.S.C. 3106(e))

(d) *Informing the veteran*. The veteran will be informed in writing of changes in case status by VA which affect his or her receipt of benefits and services under Chapter 31. The letter to the veteran will include the reason for the change of case status, and other information required under provisions of § 21.420.

(Authority: 38 U.S.C. 3107)

(e) *Normal progression for eligible veterans*. The cases of veterans who are eligible for and entitled to services under Chapter 31 for whom individualized plans have been prepared will generally undergo the following changes of status:

(1) *Individualized written rehabilitation plan*. A veteran with an IWRP (Individualized Written Rehabilitation Plan) will generally move sequentially from *applicant* status through *evaluation and planning* status, *rehabilitation to the point of employability* status, *employment services* status, and *rehabilitated* status.

(2) *Individualized extended evaluation plan*. A veteran with an IEEP (Individualized Extended Evaluation Plan) will generally move from *applicant* status through *evaluation and planning* status to *extended evaluation* status. Once in *extended evaluation* status there will generally be a finding which leads to development of an IWRP (paragraph

(e)(1) of this section), or IILP (Individualized Independent Living Plan) (paragraph (e)(3) of this section).

(3) *Individualized independent living plan.* A veteran with an IILP (Individualized Independent Living Plan) will generally move from *applicant* status through *evaluation and planning, extended evaluation, independent living,* and *rehabilitated status.*

(4) *Individualized employment assistance plan.* (i) A veteran with an IEAP (Individualized Employment Assistance Plan) which is a part of an IWRP will move through the case statuses described in paragraph (e)(1) of this section, or in some cases through the steps in paragraph (e)(2) of this section.

(ii) A veteran for whom only employment services are provided will generally move from *applicant* through *evaluation and planning, employment services* to *rehabilitated* status.

(Authority: 38 U.S.C. 3107)

(f) *Normal progression for ineligible veterans.* A veteran found ineligible for services under Chapter 31 will generally move from *applicant* to *evaluation and planning* status, to *ineligible* status.

(Authority: 38 U.S.C. 3107)

(g) *Changes of status.* The case manager may change the case status when:

(1) Conditions for change specified in the status are met;

(2) The change is not specifically precluded by the status to which change is being considered; and

(3) The change is consistent with provisions of other applicable regulations.

(Authority: 38 U.S.C. 3106)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 34987, Aug. 23, 1989; 62 FR 17708, Apr. 11, 1997]

### § 21.182 "Applicant" status.

(a) *Purpose.* The purposes of *applicant* status are to:

(1) Process a veteran's claim for assistance under Chapter 31 in a timely manner; and

(2) Identify service-disabled veterans whom VA should contact individually to increase their awareness and understanding of how they may benefit from services furnished under Chapter 31.

(Authority: 38 U.S.C. 3102)

(b) *Assignment to applicant* status. VA will assign a veteran's records to *applicant* status when either:

(1) VA receives a formal or informal application from a veteran for services under Chapter 31; or

(2) The VR&E (Vocational Rehabilitation and Employment) Division:

(i) Advises a veteran in writing of the veteran's potential eligibility for Chapter 31 services, or

(ii) Is informed that the veteran has been advised in writing of his or her potential eligibility for Chapter 31 services by other VA elements.

(Authority: 38 U.S.C. 3102(2))

(c) *Termination of applicant* status. *Applicant* status will be terminated when:

(1) An appointment for an initial evaluation has been kept by the veteran; or

(2) The veteran's service-connected disability is reduced to a noncompensable degree; or

(3) The veteran's service-connected disability is severed; or

(4) The veteran's application is invalid because of fraud or error; or

(5) The veteran withdraws his or her claim, or otherwise indicates that no further assistance is desired.

(Authority: 38 U.S.C. 3106)

(d) *Transfer of terminated cases to discontinued* status. Each instance in which a veteran's case is terminated for reasons described in paragraph (c)(4) or (5) of this section shall be placed in *discontinued* status.

(Authority: 38 U.S.C. 3102)

CROSS REFERENCE: See §§ 21.30 Claims, 21.31 Informal claims, and 21.32 Time limits.

[49 FR 40814, Oct. 18, 1984, as amended at 52 FR 2518, Jan. 23, 1987]

### § 21.184 "Evaluation and planning" status.

(a) *Purpose.* The purpose of *evaluation and planning* status is to identify veterans for whom evaluation and planing services are needed to:

(1) Accomplish an initial evaluation as provided in § 21.50;

(2) Develop an IWRP (Individualized Written Rehabilitation Plan), IEEP (Individualized Extended Evaluation Plan), IILP (Individualized Independent Living Plan) or IEAP (Individualized Employment Assistance Plan); or

(3) Reevaluate:

(i) Findings made in prior initial evaluations, or

(ii) Current or previous individualized rehabilitation plans.

(b) *Assignment to evaluation and planning* status. A veteran's records will be assigned to *evaluation and planning* status for any of the purposes specified in paragraph (a) of this section.

(c) *Termination of evaluation and planning* status. The assignment of the veteran's records to *evaluation and planning* status may be terminated under the following conditions:

(1) *Evaluation and planning completed.* The services necessary to complete evaluation and planning have been provided. These services are:

(i) Completion of an initial evaluation;

(ii) Development of an IWRP (Individualized Written Rehabilitation Plan) or other individual rehabilitation plan in those cases in which eligibility and entitlement to services provided under Chapter 31 are established; or

(iii) Completion of reevaluation of prior findings made in initial evaluation or modification of a rehabilitation plan.

(2) *Evaluation and planning not completed.* The VR&E Division shall make every reasonable effort to enable the veteran to complete the evaluation and planning phase of the rehabilitation process. A determination that every reasonable effort by VA has been made, and that little likelihood exists that continued efforts will lead to completion of planning and evaluation, may be made under the following conditions:

(i) The veteran writes VA and requests that his or her case be inactivated;

(ii) The veteran fails to keep scheduled appointments following his or her initial appointment; or

(iii) The veteran otherwise fails to cooperate with VA in the evaluation and planning process. If the veteran fails to cooperate, the provisions of § 21.362 are applicable.

(Authority: 38 U.S.C. 3106, 3107)

CROSS REFERENCE: See §§ 21.50 through 21.58 Initial and extended evaluation, and §§ 21.80 through 21.98 Individualized written rehabilitation plan.3

### § 21.186 "Ineligible" status.

(a) *Purpose.* The purpose of *ineligible* status is to identify the cases in which a veteran requests services under Chapter 31, but the request is denied by VA, usually, on the basis of information developed when the veteran was in *evaluation and planning* status.

(Authority: 38 U.S.C. 3106)

(b) *Assignment to ineligible* status. A veteran's case will be assigned to *ineligible* status following a finding by VA that the veteran is not eligible for or entitled to services under Chapter 31. The finding must preclude all possible Chapter 31 services.

(Authority: 38 U.S.C. 3106, 3107)

(c) *Termination of ineligible* status. The assignment of the veteran's case to *ineligible* status should be terminated if the veteran thereafter becomes eligible to receive any Chapter 31 service. Placement of the case in *ineligible* status is a bar to reconsideration of eligibility unless a material change in circumstances occurs.

(Authority: 38 U.S.C. 3106)

### § 21.188 "Extended evaluation" status.

(a) *Purpose.* The purposes of *extended evaluation* status are to:

(1) Identify a veteran for whom a period of *extended evaluation* is needed; and

(2) Assure that necessary services are provided by VA during the extended evaluation.

(Authority: 38 U.S.C. 3106)

(b) *Assignment to extended evaluation* status. A veteran's case may be assigned or reassigned to *extended evaluation* status under provisions of § 21.57, § 21.74, § 21.86, § 21.94, § 21.96, or § 21.98.

(Authority: 38 U.S.C. 3107)

(c) *Continuation in extended evaluation* status. A veteran's case will be in *extended evaluation* status during periods in which:

(1) The veteran is pending induction into the facility at which rehabilitation services will be provided;

(2) The veteran is receiving rehabilitation services prescribed in the IEEP (§ 21.86); or

(3) The veteran is on authorized leave of absence during an extended evaluation.

(Authority: 38 U.S.C. 3108)

(d) *Termination of extended evaluation status.* A veteran in *extended evaluation* status will remain in that status until one of the following events occur:

(1) Following notification of necessary arrangements to begin an extended evaluation, the date the extended evaluation begins, and instructions as to the next steps to be taken, the veteran:

(i) Fails to report and does not respond to followup contact by the case manager;

(ii) Declines or refuses to enter the program; or

(iii) Defers induction for a period exceeding 30 days beyond the scheduled date of induction, except where the deferment is due to illness or other sufficient reason;

(2) VA determines the reasonable feasibility of a vocational goal for the veteran before completion of all of the planned evaluation because the decision does not require the further evaluation;

(3) The veteran completes the extended evaluation;

(4) Either the veteran or VA interrupts the extended evaluation;

(5) Either the veteran or VA discontinues the extended evaluation; or

(6) Service-connection for the veteran's service-connected disability is severed by VA or his or her continued eligibility otherwise ceases.

(Authority: 38 U.S.C. 3106)

CROSS REFERENCES: See §§ 21.57 Extended evaluation, 21.322 Commencing dates, 21.324 Reduction or termination.

### § 21.190 "Rehabilitation to the point of employability" status.

(a) *Purpose.* The *rehabilitation to the point of employability* status serves to:

(1) Identify veterans who receive training and rehabilitation services to enable them to attain a vocational goal; and

(2) Assure that services specified in the veteran's IWRP are provided in a timely manner by VA.

(Authority: 38 U.S.C. 3101)

(b) *Assignment.* A veteran's case may be assigned or reassigned to *rehabilitation to the point of employability* status under the provisions of § 21.84, § 21.94, § 21.96, or § 21.98.

(Authority: 38 U.S.C. 3107)

(c) *Continuation in rehabilitation to the point of employability* status. A veteran will be assigned to *rehabilitation to the point of employability* status during periods in which:

(1) The veteran has progressed through *applicant* status and *evaluation and planning* status (including extended evaluation status when appropriate), and is pending induction into the facility at which training and rehabilitation services will be provided;

(2) The veteran is receiving training and rehabilitation services prescribed in the IWRP; or

(3) The veteran is on authorized leave of absence.

(Authority: 38 U.S.C. 3104, 3108)

(d) *Termination of rehabilitation to the point of employability* status when goals of the IWRP for this period are achieved. VA will consider a veteran to have completed the period of rehabilitation to the point of employability, and will terminate this status under the following conditions:

(1) The veteran achieves the goals of, and has been provided services specified in, the IWRP;

(2) The veteran who leaves the program has completed a sufficient portion of the services prescribed in the IWRP to establish clearly that he or she is generally employable as a trained worker in the occupational objective established in the IWRP;

(3) The veteran, who has not completed all prescribed services in the IWRP, accepts employment in the occupational objective established in the IWRP with wages and other benefits commensurate with wages and benefits received by trained workers; or

(4) The veteran:

(i) Satisfactorily completes a prescribed program, the practice of which requires pursuing an examination for licensure, but

(ii) Is unable to take the licensure examination prior to the basic twelve-year termination date and there is no basis for extension of that date.

(Authority: 38 U.S.C. 3107)

(e) *Other conditions for termination of rehabilitation to the point of employability* status. In addition to termination under conditions described in paragraph (d) of this section, the classification of the veteran's records in this status may be terminated under any of the following conditions:

(1) A veteran who has been notified of necessary arrangements to begin the program, the date the program begins and instructions as to the next steps to be taken:

(i) Fails to report and does not respond to initial or subsequent followup by the case manager;

(ii) Declines or refuses to enter the program; or

(iii) Defers induction for a period exceeding 30 days beyond the scheduled beginning date of the program, except where the deferment is due to illness or other sufficient reason.

(2) Either the veteran or VA interrupts the period of rehabilitation to the point of employability;

(3) Either VA or the veteran discontinues the period of rehabilitation to the point of employability;

(4) The veteran reaches his or her termination date, and there is no basis for extension under § 21.44;

(5) The veteran's entitlement to training and rehabilitation services under Chapter 31 is exhausted, and there is no basis for extension under § 21.78; or

(6) Service-connection for the veteran's service-connected disability is served by VA or he or she otherwise ceases to be eligible.

(Authority: 38 U.S.C. 3107)

(f) *Payment of employment adjustment allowance.* An employment adjustment allowance will be paid when the veteran's classification in *rehabilitation to the point of employability* status is terminated under provisions of paragraph (d) of this section. An employment adjustment allowance will not be paid if termination is for one of the reasons specified in paragraph (e) of this section.

(Authority: 38 U.S.C. 3108(a))

CROSS REFERENCES: See §§ 21.120 Educational and vocational trainings services, 21.282 Effective date of induction into a rehabilitation program, and 21.284 Reentering into a rehabilitation program.

### § 21.192 "Independent living program" status.

(a) *Purpose.* The *independent living program* status serves to:

(1) Identify veterans who are being furnished a program of independent living services by VA; and

(2) Assure that such veterans receive necessary services from VA in a timely manner.

(b) *Assignment to independent living program* status. A veteran may be assigned or reassigned to *independent living program* status under the provisions of § 21.88, § 21.94, § 21.96, or § 21.98.

(Authority: 38 U.S.C. 3107)

(c) *Continuation in independent living program* status. A veteran will be in *independent living program* status during periods in which:

(1) The provisions of § 21.282 for induction into a program are met, but the veteran is pending induction into the facility at which rehabilitation services will be provided;

(2) The veteran receives rehabilitation services prescribed in an IILP; or

(3) The veteran is on authorized leave of absence status.

(Authority: 38 U.S.C. 3109, 3120)

(d) *Termination of independent living program* status. When a veteran's case has been assigned to *independent living program* status, the case will be terminated from that status, if one of the following occurs:

(1) A veteran, who has been notified of necessary arrangements to begin a program, the date the program begins and instructions as to the next steps to be taken:

(i) Fails to report and does not respond to followup contact by the case manager;

(ii) Declines or refuses to enter the program; or

(iii) Defers entry for more than 30 days beyond the scheduled beginning date, unless the deferment is due to illness or other sufficient reason.

(2) The veteran completes the IILP;

(3) Either the veteran or VA interrupts the program;

(4) Either the veteran or VA discontinues the program; or

(5) Service-connection for the veteran's service-connected disability is severed by VA or he or she otherwise ceases to be eligible.

(Authority: 38 U.S.C. 3109, 3110)

CROSS REFERENCES: See §§ 21.160 Independent living services, 21.282 Effective date of induction into a rehabilitation program, 21.322 Commencing date, and 21.324 Reduction or termination date.

### § 21.194 "Employment services" status.

(a) *Purpose*. The status *employment services* serves to:

(1) Identify veterans who are being furnished employment services; and

(2) Assure that these veterans receive necessary services in a timely manner.

(b) *Assignment to employment services* status. A veteran's case may be assigned or reassigned to *employment services* status under the provisions of §§ 21.84, 21.88, 21.94 and 21.98.

(c) *Continuation in employment services* status. A case will remain in *employment services* status for the period specified in the IEAP, subject to the limitations specified in paragraph (d) of this section.

(d) *Termination of employment services* status. The veteran will continue in *employment services* status until the earliest of the following events occurs:

(1) He or she is determined to be rehabilitated under the provisions of § 21.283; or

(2) He or she is:

(i) Employed for at least 60 days in employment that does not meet the criteria for rehabilitation contained in § 21.283, if the veteran intends to maintain this employment and declines further assistance; and

(ii) Adjusted to the duties and responsibilities of the job.

(3) Either the veteran or VA interrupts the employment services program;

(4) Either the veteran or VA discontinues the employment services program;

(5) He or she reaches the end of the period for which employment services have been authorized and there is no basis for extension; or

(6) Service-connection for the veteran's service-connected disability is severed or he or she otherwise ceases to be eligible.

(Authority: 38 U.S.C. 3117)

CROSS REFERENCES: See §§ 21.47 Eligibility for employment assistance, 21.250 Overview of employment services, and 21.326 Authorization of employment services.

[49 FR 40814, Oct. 18, 1984, as amended at 58 FR 68768, Dec. 29, 1993]

### § 21.196 "Rehabilitated" status.

(a) *Purpose*. The purpose of *rehabilitated* status is to identify those cases in which the goals of a rehabilitation program or a program of employment services have been substantially achieved.

(b) *Assignment to "rehabilitated" status*. A veteran's case shall be assigned to "rehabilitated" status when his or her case meets the criteria for rehabilitation contained in § 21.283.

(Authority: 38 U.S.C. 3102, 3107 and 3117)

(c) *Termination of rehabilitated* status. A veteran's case will not be removed from *rehabilitated* status under § 21.284

once that status has been assigned, unless the determination of rehabilitation is set aside for a reason specified in § 21.284.

(Authority: 38 U.S.C. 3100)

CROSS REFERENCE: See § 21.284 Reentrance into a rehabilitation program.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 58 FR 68768, Dec. 29, 1993]

**§ 21.197 "Interrupted" status.**

(a) *Purpose*. The purpose of *interrupted* status is to recognize that a variety of situations may arise in the course of a rehabilitation program in which a temporary suspension of the program is warranted. In each case, VA first must determine that the veteran will be able to return to a rehabilitation program or a program of employment services following the resolution of the situation causing the interruption. This determination will be documented in the veteran's record.

(Authority: 38 U.S.C. 3117)

(b) *Assignment to "interrupted" status*. A veteran's case will be assigned to *interrupted* status when:

(1) VA determines that a suspension of services being provided is necessary; and

(2) Either:

(i) A definite date for resumption of the program is established; or

(ii) The evidence indicates the veteran will be able to resume the program at some future date, which can be approximately established.

(Authority: 38 U.S.C. 3110)

(c) *Reasons for assignment to "interrupted" status*. A veteran's case may be interrupted and assigned to *interrupted* status for reasons including but not limited to the following:

(1) *Veteran does not initiate or continue rehabilitation process*. If a veteran does not begin or continue the rehabilitation process, the veteran's case will be interrupted and assigned to *interrupted* status, including:

(i) A case in *evaluation and planning* status;

(ii) A case in *extended evaluation* status;

(iii) A case in *rehabilitation to the point of employability* status;

(iv) A case in *independent living program* status; or

(v) A case in *employment services* status.

(2) *Unsatisfactory conduct and cooperation*. If a veteran's conduct or cooperation becomes unsatisfactory, services and assistance may be interrupted as determined under provisions of §§ 21.362 and 21.364.

(3) *Services not available*. The veteran cannot continue the program because the necessary training and rehabilitation services are unavailable.

(4) *Prior to assignment to "discontinued" status*. A veteran's case shall be assigned to *interrupted* status prior to discontinuance and assignment to *discontinued* status in all cases except as provided in § 21.182(d) and upon the veteran's death. The purpose of assignment to *interrupted* status is to assure that all appropriate actions have been taken to help the veteran continue in his or her program before discontinuing benefits and services.

(5) *Absences*. The veteran is not entitled to be placed on authorized absence under §§ 21.340 through 21.350 while in interrupted status.

(Authority: 38 U.S.C. 3111)

(d) *Reentrance from "interrupted"* status. (1) A veteran in *interrupted* status may be assigned to his or her prior status or other appropriate status, if he or she reports for entrance or reentrance into the prescribed program at the time and place scheduled for the resumption of the rehabilitation program.

(2) If a veteran in *interrupted* status fails to report for entrance or reentrance into the program at the appointed time and place, the veteran's case will remain in *interrupted* status. The case manager will then determine whether there is a satisfactory reason for the veteran's failure to enter a new or reenter the prior program. If the evidence of record does not establish a satisfactory reason, the veteran's case will be discontinued and assigned to *discontinued* status.

(e) *Case management responsibility during a period of interruption*. The case manager shall maintain contact with

the veteran during *interruption* and shall arrange for appropriate medical or other services the veteran needs to be able to enter or reenter a rehabilitation program or a program of employment services.

(Authority: 38 U.S.C. 3107)

CROSS REFERENCE: See § 21.324 Reduction or termination date.

[49 FR 40814, Oct. 18, 1984, as amended at 52 FR 2518, Jan. 23, 1987]

### § 21.198 "Discontinued" status.

(a) *Purpose*. The purpose of *discontinued* status is to identify situations in which termination of all services and benefits received under Chapter 31 is necessary.

(b) *Placement in ''discontinued''*. VA will discontinue the veteran's case and assign the case to *discontinued* status following assignment to *interrupted* status as provided in § 21.197 for reasons including but not limited to the following:

(1) *Veteran declines to initiate or continue rehabilitation process*. If a veteran does not initiate or continue the rehabilitation process and does not furnish an acceptable reason for his or her failure to do so following assignment to *interrupted* status, the veteran's case will be discontinued and assigned to *discontinued* status. This includes:

(i) A case in *applicant* status;

(ii) A case in *evaluation and planning* status;

(iii) A case in *extended evaluation* status;

(iv) A case in *rehabilitation to the point of employability* status;

(v) A case in *independent living program* status;

(vi) A case in *employment services* status; or

(vii) A case in *interrupted* status;

(2) *Unsatisfactory conduct and cooperation*. When a veteran's conduct or cooperation becomes unsatisfactory, services and assistance may be discontinued and assigned to *discontinued* status as determined under provisions of §§ 21.362 and 21.364.

(3) *Eligibility and entitlement*. Unless the veteran desires employment assistance, the veteran's case will be discontinued and assigned to *discontinued* status when:

(i) The veteran reaches the basic twelve-year termination date, and there is no basis for extension; or

(ii) The veteran has used 48 months of entitlement under one or more VA programs, and there is no basis for extension of entitlement.

(4) *Medical and related problems*. A veteran's case will be discontinued and assigned to *discontinued* status when:

(i) The veteran will be unable to participate in a rehabilitation program because of a serious physical or emotional problem for an extended period; and

(ii) VA medical staff are unable to estimate an approximate date by which the veteran will be able to begin or return to the program.

(5) *Withdrawal*. Veteran voluntarily withdraws from the program.

(6) *Failure to progress*. The veteran's case will be discontinued and assigned to *discontinued* status if his or her failure to progress in a program is due to:

(i) Continuing lack of application by the veteran unrelated to any personal or other problems; or

(ii) Inability of the veteran to benefit from rehabilitation services despite the best efforts of VA and the veteran.

(Authority: 38 U.S.C. 3108, 3111)

(7) *Special review of proposed discontinuance action*. The Vocational Rehabilitation and Employment (VR&E) Officer shall review each case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling. The VR&E Officer may utilize existing resources to assist in the review, including referral to the Vocational Rehabilitation Panel (VRP).

(Authority: 38 U.S.C. 3104(a)(1))

(c) *Termination of ''discontinued'' status*. Except as noted in paragraph (c)(3) of this section assignment of the veteran's case to the same status from which the veteran was discontinued or to a different one requires that VA first find:

(1) The reason for the discontinuance has been removed; and

(2) VA has redetermined his or her eligibility and entitlement under Chapter 31.

(3) In addition to the criteria described in paragraphs (c) (1) and (2) of this section a veteran placed into *discontinued* status as a result of a finding of unsatisfactory conduct or cooperation under §§ 21.362 and 21.364 must also meet the requirements for reentrance into a rehabilitation program found in § 21.364.

(Authority: 38 U.S.C. 3111)

(d) *Follow-up of a cases placed in ''discontinued'' status.* VA shall establish appropriate procedures to follow up on cases which have been placed in *discontinued* status, except in those cases reassigned from *applicant* status. The purpose of such followup is to determine if:

(1) The reasons for discontinuance may have been removed, and reconsideration of eligibility and entitlement is possible; or

(2) The veteran is employed, and criteria for assignment to *rehabilitated* status are met.

(Authority: 38 U.S.C. 3107)

CROSS REFERENCE: See § 21.324 Reduction or termination dates of subsistence allowance.

[49 FR 40814, Oct. 18, 1984, as amended at 52 FR 2518, Jan. 23, 1987; 53 FR 32620, Aug. 26, 1988]

SUPPLIES

## § 21.210 Supplies.

(a) *Purpose of furnishing supplies.* Supplies are furnished to enable a veteran to pursue rehabilitation and achieve the goals of his or her program.

(b) *Definition.* The term *supplies* includes books, tools, and other supplies and equipment which VA determines are necessary for the veteran's rehabilitation program.

(c) *Periods during which supplies may be furnished.* Supplies may be furnished during:

(1) Extended evaluation;

(2) Rehabilitation to the point of employability;

(3) Employment services; and

(4) An independent living services program.

(Authority: 38 U.S.C. 3104(a))

(d) *Supplies precluded.* Notwithstanding the provisions of paragraph (c) of this section, supplies may not be furnished to a veteran who has elected, or is in receipt of, payment at the educational assistance rate paid under Chapter 34.

(Authority: 38 U.S.C. 3108(a))

## § 21.212 General policy in furnishing supplies during periods of rehabilitation.

(a) *Furnishing necessary supplies during a period of rehabilitation services.* A veteran will be furnished supplies that are necessary for a program of rehabilitation services. For example, a veteran training in a school will be furnished the supplies needed to pursue the school course. If additional supplies are subsequently needed to secure employment, they will be furnished during the period of employment services as provided in § 21.214(d).

(b) *Determining supplies needed during a period of rehabilitation.* Subject to the provisions of §§ 21.210 through 21.222, VA will authorize only those supplies which are required:

(1) To be used by similarly circumstanced non-disabled persons in the same training or employment situation;

(2) To mitigate or compensate for the effects of the veteran's disability while he or she is being evaluated, trained or assisted in gaining employment; or

(3) To allow the veteran to function more independently and thereby lessen his or her dependence on others for assistance.

(c) *When supplies may be authorized.* Supplies should generally be authorized subsequent to the date of enrollment in training or beginning date of other rehabilitation services unless there are compelling reasons to authorize them earlier. Supplies may not be authorized earlier than the date the veteran's rehabilitation plan is approved by VA and the veteran is accepted by the facility or individual providing services.

(d) *Supplies needed, but not specifically required.* VA may determine that an item, such as a calculator, while not required by the school for the pursuit of a particular school subject, is nevertheless necessary for the veteran to successfully pursue his or her program

under the provisions of § 21.156 pertaining to incidental goods and services. The item may be authorized if:

(1) It is generally owned and used by students pursuing the course; and

(2) Students who do not have the item would be placed at a distinct disadvantage in pursuing the course.

(e) *Supplies for special projects and theses*. The amount of supplies that VA may authorize for special projects, including theses, may not exceed the amount generally needed by similarly circumstanced nonveterans in meeting course or thesis requirements.

(Authority: 38 U.S.C. 3104(a))

(f) *Responsibility for authorization of supplies*. The case manager is responsible for the authorization of supplies, subject to requirements for prior approval contained in § 21.258 and other instructions governing payment of program charges.

(Authority: 38 U.S.C. 3106(e))

**§ 21.214 Furnishing supplies for special programs.**

(a) *General*. A veteran pursuing one of the following types of vocational rehabilitation programs is eligible for any types of supplies listed in § 21.212. The following paragraphs clarify the applicability of the general provisions of § 21.212 to these special situations.

(b) *Supplies furnished to veterans pursuing training in the home*. VA may furnish to veterans training in the home:

(1) Books, tools, and supplies which schools or training establishments that train individuals outside the home for the objective the veteran is pursuing at home ordinarily require all students and trainees to personally possess;

(2) Supplies and equipment which are essential to the prescribed course of training because the veteran is pursuing the course at home. Equipment in this category consists of items which ordinarily are not required by a school or training establishment;

(3) Special equipment, such as a vise or drafting table;

(4) Supplies needed to enable the veteran to function more independently in his or her home and community.

(Authority: 38 U.S.C. 3104(a))

(c) *Supplies furnished to a veteran in farm cooperative training*. The books and related training supplies which VA may furnish a veteran in farm cooperative training depend upon the type of instruction he or she is receiving:

(1) When organized, group instruction is part of a veteran's course, VA will furnish those books and supplies which the school requires all students in the school portion of the course to own personally or on a rental basis;

(2) When all instruction is given on the veteran's farm by an individual instructor, VA will furnish to a student only those textbooks and other supplies which would ordinarily be required by a school.

(Authority: 38 U.S.C. 3104(a)(7))

(d) *Obtaining and maintaining employment*. A veteran being furnished employment services may receive supplies which:

(1) The employer requires similarly circumstanced nonveterans to own upon begining employment to the extent that the items were not furnished during the period in which the veteran was training for the objective, or the items that were furnished for training purposes are not adequate for employment;

(2) VA determines that special equipment is necessary for the veteran to perform his or her duties, subject to the obligation of the employer to make reasonable accommodation to the disabling effects of the veteran's condition.

(Authority: 38 U.S.C. 3104(a), 4212)

(e) *Self-employment*. The supplies and related assistance which may be furnished, subject to the requirements prescribed under §§ 21.257 and 21.258, to a veteran for whom self-employment has been approved as the occupational objective, are generally limited to those necessary to begin operations:

(1) Minimum stocks of materials, e.g., inventory of saleable merchandise or goods, expendable items required for day-to-day operations, and items which are consumed on the premises;

(2) Essential equipment, including machinery, occupational fixtures, accessories, and appliances; and

(3) Other related assistance such as business license fees.

(Authority: 38 U.S.C. 3104(a)(12))

(f) *Supplies and related assistance which may not be furnished for self-employment.* VA may not authorize assistance for:

(1) Purchase of, or part payment for, land and buildings;

(2) Making full or part payment of leases or rentals;

(3) Purchase or rentals of trucks, cars, or other means of transportation;

(4) Stocking a farm for animal husbandry operations.

(Authority: 38 U.S.C. 3104(a)(12))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 75 FR 3169, Jan. 20, 2010]

### § 21.216 Special equipment.

(a) *General.* Special equipment should be authorized as necessary to enable a veteran to mitigate or overcome the effects of disability in pursuing a rehabilitation program. The major types of special equipment which may be authorized include:

(1) *Equipment for educational or vocational purposes.* This category includes items which are ordinarily used by nondisabled persons pursuing evaluation or training, modified to allow for use by disabled persons. e.g., calculators with speech capability for blinded persons.

(2) *Sensory aids and prostheses.* This category includes items which are specifically designed to mitigate or overcome the effects of disability. They range from eyeglasses and hearing aids to closed-circuit TV systems which amplify reading material for veterans with severe visual impairments.

(3) *Modifications to improve access.* This category includes adaptations of environment not generally associated with education and training, such as adaptive equipment for automobiles or supplies necessary to modify a veteran's home to make either training or self-employment possible.

(Authority: 38 U.S.C. 3104(a))

(b) *Coordination with other VA elements in securing special equipment.* In any case in which the veteran needs special equipment and is eligible for such equipment under other VA programs, such as medical care and treatment at VA medical centers, the items will be secured under that program. The veteran must be found ineligible for needed special equipment under other programs and benefits administered by VA before the item may be authorized under Chapter 31.

(Authority: 38 U.S.C. 3115)

### § 21.218 Methods of furnishing supplies.

(a) *Supplies furnished by the school or facility.* VA will make arrangements for the school or other facility furnishing a veteran training, rehabilitation assistance, or employment under Chapter 31 to provide supplies to the extent practicable. This method is the one most likely to assure that supplies are available and can be secured expeditiously. A facility may be considered to be furnishing supplies when the facility itself is the supplier, or the facility has designated a supplier. Prior authorization of supplies by the case manager is required, except for standard sets of books, tools, or supplies which the facility requires all trainees or employees to have.

(b) *Issuance of supplies not furnished by the facility.* VA will issue authorized supplies directly to the veteran, if the supplies are not furnished by the facility providing training, rehabilitation services, or employment.

(Authority: 38 U.S.C. 3104(a))

CROSS REFERENCE: See 48 CFR part 831. Contract cost principles and procedures.

### § 21.219 Supplies consisting of clothing, magazines and periodicals, and items which may be personally used by the veteran.

(a) *Furnishing protective articles and clothing.* Protective articles or apparel worn in place of ordinary clothing will be furnished at VA expense, when the school or training establishment requires similarly circumstanced nonveterans to use the articles of apparel. No other clothing will be supplied.

(b) *Furnishing magazines and periodicals.* Appropriate past issues of magazines, periodicals, or reprints may be furnished in the same manner as text

material, when relevant to the course or training.

(c) *Furnishing items which may be personally used.* Musical instruments, cameras, or other items which could be used personally by the veteran may only be furnished if required by the facility to meet requirements for degree or course completion.

(Authority: 38 U.S.C. 3104(a)(7))

**§ 21.220 Replacement of supplies.**

(a) *Lost, stolen, misplaced or damaged supples.* VA will replace articles which are necessary to further pursuit of the veteran's program and which are lost, stolen, misplaced, or damaged beyond repair through no fault of the veteran;

(1) VA will make an advancement from the Vocational Rehabilitation Revolving Fund to a veteran to replace articles for which VA will not pay, if the veteran is without funds to pay for them;

(2) If a veteran refuses to replace an article indispensable to the program after VA determines that its loss or damage was his or her fault, the veteran's refusal may be considered as noncooperation under § 21.364;

(3) If the veteran's program is discontinued under provisions of § 21.364(b), he or she will be reentered into the program only when he or she replaces the necessary articles.

(Authority: 38 U.S.C. 3104(a))

(b) *Personally purchased supplies.* VA will not generally reimburse a veteran who personally buys supplies. VA may pay for the required supplies which a training facility or other vendor sells to a veteran, if the facility chooses to return to the veteran the amounts he or she paid, so that the charges stand as an unpaid obligation of VA to the facility. If the facility does not agree to such an arrangement, VA may still pay the veteran, if the facts and equities of the case are demonstrated.

(Authority: 38 U.S.C. 3115)

(c) *Supplies used in more than one part of the program.* Except as provided in paragraph (a) of this section, VA will generally furnish any nonconsumable supplies only one time, even though the same supplies may be required for use by the veteran in another subject or in another quarter, semester, or school year.

(Authority: 38 U.S.C. 3104(a)(7))

**§ 21.222 Release of, and repayment for, training and rehabilitation supplies.**

The value of supplies authorized by VA will be repaid under the provisions of this section, when the veteran fails to complete the program as planned.

(a) *Consumable supplies.* VA will require reimbursement from a veteran for consumable supplies authorized, unless:

(1) The veteran fails to complete the rehabilitation program through no fault of his or her own;

(2) The employment objective of the rehabilitation plan is changed as a result of reevaluation by VA staff;

(3) The total value of the supplies for which repayment is required is less than $100; or

(4) The veteran dies.

(Authority: 38 U.S.C. 3104)

(b) *Nonconsumable supplies (general).* (1) In addition to the exceptions noted in paragraph (c) of this section, VA will not require reimbursement from a veteran for nonconsumable supplies authorized, if:

(i) The veteran and VA change the long-range goal of the rehabilitation plan and those supplies are not required for the veteran's pursuit of training for the new goal;

(ii) The veteran's failure to complete the program was not his or her fault;

(iii) The veteran was pursuing the program at a facility which recovers nonconsumable supplies from veterans through contractural arrangements with VA, and the veteran returned to the facility all the nonconsumable supplies furnished at VA expense;

(iv) The veteran reenters the Armed Forces or is in the process of reentering the Armed Forces;

(v) The veteran satisfactorily completed one-half or more of a noncollege degree course (or at least two terms in the case of a college course) for which VA furnished the supplies;

(vi) The veteran certifies that he or she is using in current employment the supplies furnished during training;

(vii) The total value of the supplies for which repayment is required is less than $100;

(viii) The veteran dies;

(ix) The veteran is furnished supplies during a period of employment services but loses the job through no fault of his or her own;

(x) A veteran discontinued from an *independent living services* program is using supplies and equipment to reduce his or her dependence on others; or

(xi) The veteran is declared rehabilitated.

(2) The amount which a veteran must repay will be the lesser of the current value of the supplies, or the original cost of the supplies. VA will accept supplies in lieu of repayment of the value of the supplies if VA has authorized a change of objective.

(Authority: 38 U.S.C. 3104(a))

(c) *Training in the home and self-employment.* In addition to the reasons for not requiring repayment or return of nonconsumable supplies listed in paragraph (b) of this section, VA will not require a veteran to pay for or return nonconsumable supplies if: (1) In the case of a veteran training in the home:

(i) VA furnished such supplies to equip his or her home as a place of training; and

(ii) The veteran has completed enough of his or her training program to be considered employable, and has been declared rehabilitated to the point of employability;

(2) A veteran in a self-employment program not in the home is declared rehabilitated; or

(3) The veteran dies and the Director, VR&E Service determines that the facts and equities of the family situation warrant waiver of all or a part of the requirements for repayment.

(Authority: 38 U.S.C. 3104(a)(12))

[49 FR 40814, Oct. 18, 1984, as amended at 62 FR 17708, Apr. 11, 1997]

### § 21.224 Prevention of abuse.

Supplies are to be furnished under the most careful checks by the case manager as to what is needed by the veteran to pursue his or her program. Determinations of the supplies needed to enable the veteran to successfully pursue his or her rehabilitation program are made under the provisions of §§ 21.210 through 21.222.

(Authority: 38 U.S.C. 3104, 3111)

MEDICAL AND RELATED SERVICES

### § 21.240 Medical treatment, care and services.

(a) *General.* A Chapter 31 participant shall be furnished medical treatment, care and services which VA determines are necessary to develop, carry out and complete the veteran's rehabilitation plan. The provision of such services is a part of the veteran's entitlement to benefits and services under Chapter 31, and is limited to the period or periods in which the veteran is a Chapter 31 participant.

(Authority: 38 U.S.C. 3104, 3107)

(b) *Scope of services.* The services which may be furnished under Chapter 31 include the treatment, care and services described in part 17 of this title. In addition the following services may be authorized under Chapter 31 even if not included or described in part 17:

(1) Prosthetic appliances, eyeglasses, and other corrective or assistive devices;

(2) Services to a veteran's family as necessary for the effective rehabilitation of the veteran;

(3) Special services (including services related to blindness and deafness) including:

(i) Language training; speech and voice correction, training in ambulation, and one-hand typewriting;

(ii) Orientation, adjustment, mobility and related services;

(iii) Telecommunications, sensory and other technical aids and devices.

(c) *Eligibility.* A veteran is eligible for the services described in paragraph (b) of this section during periods in which he or she is considered a Chapter 31 participant. These periods include:

(1) Initial evaluation;

(2) Extended evaluation;

(3) Rehabilitation to the point of employability;

(4) Independent living services program;

(5) Employment services; and

(6) Other periods to the extent that services are needed to begin or continue in any of the statutes described in paragraphs (c)(1) through (5) of this section. Such periods include but are not limited to services needed to facilitate reentry into rehabilitation following:

(i) Interruption; or

(ii) Discontinuance because of illness or injury.

(Authority: 38 U.S.C. 3104)

CROSS REFERENCE: See § 17.48(g). Participating in a rehabilitation program under Chapter 31.

### § 21.242 Resources for provision of treatment, care and services.

(a) *General.* VA medical centers are the primary resources for the provision of medical treatment, care and services for Chapter 31 participants which may be authorized under the provisions of § 21.240. The availability of necessary services in VA facilities shall be ascertained in each case.

(Authority: 38 U.S.C. 3115)

(b) *Hospital care and medical service.* Hospital care and medical services provided under Chapter 31 shall only be furnished in facilities over which VA has direct jurisdiction, except as authorized on a contract or fee basis under the provisions of part 17 of this title.

(Authority: 38 U.S.C. 3115(b))

CROSS REFERENCES: See § 17.30(l). Hospital care. § 17.30(m) Medical services.

## EMPLOYMENT SERVICES

### § 21.250 Overview of employment services.

(a) *General.* Employment services shall be provided if:

(1) Eligibility for employment services exists;

(2) The employment services which are needed have been identified; and

(3) The services which have been identified are incorporated in the veteran's IWRP (Individualized Written Rehabilitation Plan) or IEAP (Individualized Employment Assistance Plan).

(Authority: 38 U.S.C. 3107, 3117)

(b) *Definitions.* (1) The term *program (period) of employment services* includes the counseling, medical, social, and other placement and postplacement services provided to a veteran under 38 U.S.C. Chapter 31 to assist the veteran in obtaining or maintaining suitable employment. The term *program of employment services* is used only if the veteran's eligibility under Chapter 31 is limited to employment services.

(2) The term *job development* means a comprehensive professional service to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran. Continuing and mutually beneficial relationships with employers should be established by VA staff through referral of suitable employees and supportive services (e.g., adjustment counseling and job modification). Job development activities by VA staff are intended to provide disabled workers with a chance for suitable employment with cooperating employers.

(3) The term *employable* means the veteran is able to secure and maintain employment in the competitive labor market or in a sheltered workshop or other special situation at the minimum wage.

(Authority: 38 U.S.C. 3101, 3106, 3116, 3117)

(c) *Determining eligibility for, and the extent of, employment services.* (1) A veteran's eligibility for employment services shall be determined under the provisions of § 21.47;

(2) The duration of the period of employment services is determined under provisions of § 21.73;

(3) An IEAP (Individualized Employment Assistance Plan) shall be prepared under provisions of § 21.88;

(4) A veteran shall be placed in and removed from ''Employment Assistance Status'' under provisions of § 21.194.

(Authority: 38 U.S.C. 3101, 3117)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 54 FR 21216, May 17, 1989]

**§ 21.252 Job development and placement services.**

(a) *General.* Job development and placement services may include:

(1) Direct placement assistance by VA;

(2) Utilization of the job development and placement services of:

(i) DVOP (Disabled Veterans Outreach Program) specialists;

(ii) Programs authorized under the Rehabilitation Act of 1973, as amended;

(iii) The State Employment Services and the Veterans' Employment and Training Service of the United States Department of Labor;

(iv) The Office of Personnel Management; and

(v) The services of any other public, or nonprofit organization having placement services available; and

(vi) Any for-profit agency in a case in which it has been determined that comparable services are not available through public and nonprofit agencies and comparable services cannot be provided cost-effectively by the public and nonprofit agencies listed in this paragraph.

(Authority: 38 U.S.C. 3117(a)(2))

(b) *Promotion of employment and training opportunities.* As funding permits, VA employees engaged in the administration of Chapter 31 will promote the establishment of employment, training, and related opportunities to accomplish the purposes described in § 21.1.

(Authority: 38 U.S.C. 3101)

(c) *Advocacy responsibility.* VA shall take reasonable steps to ensure that a veteran being provided employment services receives the benefit of any applicable provision of law or regulation providing for special consideration or emphasis or preference of the veteran in employment or training, especially programs and activities identified in the preceding paragraphs of this section.

(Authority: 38 U.S.C. 523)

(d) *Interagency coordination.* VA employees providing assistance to Chapter 31 participants shall coordinate their job development, placement, promotional, and advocacy activities with similar or related activities of:

(1) The Department of Labor and State employment security agencies as provided by written agreement or other arrangement;

(2) The State approving agencies:

(3) Other public, for-profit and nonprofit agencies providing employment and related services.

(Authority: 38 U.S.C. 3116, 3117, Pub. L. 100–689)

[49 FR 40814, Oct. 18, 1984, as amended at 55 FR 42187, Oct. 18, 1990; 62 FR 17708, Apr. 11, 1997]

**§ 21.254 Supportive services.**

(a) *General.* Supportive services which may be provided during a period or program of employment services include a broad range of medical treatment, care and services, supplies, license and other fees, special services, including services to the blind and deaf, transportation assistance, services to the veteran's family, and other appropriate services, subject to the limitations provided in VA regulations governing the provisions of these services under Chapter 31.

(b) *Exclusions.* The following benefits may not be provided to the veteran by VA during a period or program of employment services:

(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 for similar training;

(2) Education and training services, other than brief courses, such as review courses necessary for licensure;

(3) Revolving Fund Loan; and

(4) Work-study allowance.

(Authority: 38 U.S.C. 3104(a), 3108(f))

(c) *Individuals with service-connected disability(ies) trained for self-employment under a State rehabilitation agency.* An individual with service-connected disability(ies) who has trained for self-employment under a State rehabilitation agency may be provided supplemental equipment and initial stocks and supplies similar to the materials supplied under 38 U.S.C. chapter 31 to individuals with the most severe service-connected disability(ies) who require self-employment as defined in § 21.257(b) if

VA determines that the following conditions are met:

(1) The individual is eligible for employment assistance under the provisions of § 21.47;

(2) Evidence of record indicates that the individual has successfully completed training for a self-employment program under a State rehabilitation agency;

(3) No other non-VA sources of assistance are known to be available for the individual to complete his or her self-employment program; and

(4) The individual meets the requirements of the definition in § 21.257(b).

(Authority: 38 U.S.C. 3104, 3117(b)(2))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997; 75 FR 3169, Jan. 20, 2010]

### § 21.256 Incentives for employers.

(a) *General.* VA may make payments to employers to enable a veteran who has been rehabilitated to employability to begin and maintain employment or to provide on-job training. The purpose of such payment is to facilitate the placement of veterans who are generally qualified for employment but may lack some specific training or work experience which the employer requires or who are difficult to place due to their disability. The specific conditions which must be met before this option may be considered are contained in paragraphs (b) through (d) of this section.

(b) *Requirements for payments to employers.* Payments may be made to employers to provide on-job training or to begin and maintain employment if all of the following conditions are met:

(1) The veteran is in need of an on-job training situation or is generally qualified for employment but such on-job situation or employment opportunity is not otherwise available despite repeated and intensive efforts on the part of VA and the veteran to secure such opportunities. These conditions are also considered to be met when:

(i) There are few employers within commuting distance of the veteran's home who can provide a training or employment opportunity consistent with the veteran's plan; and

(ii) The veteran reasonably could not be required to seek on-job or employment opportunities in other areas due to the effects of his or her disability, family situation, or other pertinent factors; and

(iii) The available local employers will only provide a training or employment opportunity if VA agrees to reimburse for direct expenses to the degree permitted under this section.

(2) The training establishment or employer is in compliance with provisions of § 21.292 (a) and (b), pertaining to the approval of courses and facilities.

(3) VA entered into an agreement with the employer in writing prior to the beginning of the period of on-job training or employment, whereby the employer will be reimbursed for direct expenses approved under provisions of paragraph (c) of this section.

(4) The on-job training program or employment of the veteran does not displace a current employee or prevent the recall of a laid-off employee.

(c) *Limitation on payment.* Payments to the employer may be made only for the employer's direct expenses as a result of hiring the veteran and generally may not exceed one-half of the wage paid to other employees in the same or similar job. Direct expenses include:

(1) Instruction;

(2) Instructional aids;

(3) Training materials and supplies provided to the veteran;

(4) Minor modification of equipment to the special limitations of the veteran;

(5) Significant loss of productivity of the employer caused by using the veteran as opposed to a nondisabled employee.

(d) *Duration.* The period for which the employer is paid may not exceed the period necessary to accomplish on-job training or to begin and maintain employment at the journeyman level for at least 2 months. The period for which payment may be authorized may not exceed 9 months, unless the VR&E Officer, approves a longer period.

(e) *Benefits and services.* (1) An eligible veteran on whose behalf payments are made to the employer shall be provided all other Chapter 31 benefits and

services furnished to other veterans receiving employment services. A veteran may not be paid a subsistence allowance during the period in which job training or work experience is furnished under this section.

(2) Notwithstanding any other provisions of these regulations, if the program in which the veteran is participating meets the criteria for approval of on-job training under chapter 30, the veteran may be paid at educational assistance rates provided for this type of training under chapter 30 to the extent that he or she has remaining eligibility and entitlement under chapter 30 and has elected to receive a subsistence allowance in accordance with § 21.7136.

(Authority: 38 U.S.C. 3108(f), 3116(b))

(f) *Non-duplication*. VA will not make payments under the provisions of this section to an employer receiving payments from any other program for the same training or employment expenses.

(Authority: 38 U.S.C. 3116(b))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997]

### § 21.257 Self-employment.

(a) *Approval of self-employment as a vocational goal*. A program of vocational rehabilitation benefits and services may include self-employment for an individual if VA determines that such an objective is a suitable vocational goal. VA will make this determination based on—

(1) The results of the individual's initial evaluation conducted in accordance with the provisions of § 21.50; and

(2) The provisions of this section.

(Authority: 38 U.S.C. 3104(a))

(b) *Definition*. For purposes of this subpart, *individuals with the most severe service-connected disability(ies) who require self-employment* means individuals who have been determined by VA to have limitations affecting employability arising from the effects of each individual's service-connected disability(ies), which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individuals.

(Authority: 38 U.S.C. 3104)

(c) *Scope of self-employment benefits and services*. (1) VA may provide the self-employment services listed in paragraph (d) of this section to program participants who are pursuing the vocational goal of self-employment.

(2) VA may provide the more extensive services listed in paragraph (e) of this section to individuals with the most severe service-connected disability(ies) who require self-employment.

(Authority: 38 U.S.C. 3104(a))

(d) *Assistance for other individuals in self-employment*. Subject to the provisions of § 21.258, VA may provide the following assistance to any individual for whom self-employment is determined to be a suitable vocational goal—

(1) Vocational training;

(2) Incidental training in the management of a business;

(3) License or other fees required for self-employment;

(4) Necessary tools and supplies for the occupation; and

(5) Services described in § 21.252.

(Authority: 38 U.S.C. 3104(a))

(e) *Special self-employment services for individuals with the most severe service-connected disability(ies) who require self-employment*. Individuals described in paragraph (b) of this section who are in a self-employment program may receive—

(1) The services described in paragraph (d) of this section; and

(2) The assistance described in § 21.214.

(Authority: 38 U.S.C. 3104, 3116, 3117)

(f) *Feasibility analysis of a proposed self-employment business plan*. VA will conduct a comprehensive review and analysis of the feasibility of a proposed business plan, as submitted by the individual or developed with VA's assistance, prior to authorizing a rehabilitation plan leading to self-employment (a

''self-employment plan''). The feasibility analysis must include—

(1) An analysis of the economic viability of the proposed business;

(2) A cost analysis specifying the amount and types of assistance that VA will provide;

(3) A market analysis for the individual's proposed services or products;

(4) Availability of financing from non-VA sources, including the individual's personal resources, local banks, and other sources;

(5) Evidence of coordination with the Small Business Administration to secure special consideration under section 8 of the Small Business Act, as amended;

(6) The location of the site for the proposed business and the cost of the site, if any; and

(7) A training plan to operate a successful business.

(Authority: 38 U.S.C. 3104)

[75 FR 3170, Jan. 20, 2010]

### § 21.258 Cost limitations on approval of self-employment plans.

A self-employment plan with an estimated or actual cost of less than $25,000 may be approved by the VR&E Officer with jurisdiction. Any self-employment plan with an estimated or actual cost of $25,000 or more must be approved by the Director, VR&E Service.

(Authority: 38 U.S.C. 3104)

[75 FR 3170, Jan. 20, 2010]

MONETARY ASSISTANCE SERVICES

### § 21.260 Subsistence allowance.

(a) *General*. A veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 will receive a monthly subsistence allowance at the rates in paragraph (b) of this section, unless the veteran elects to receive an alternate payment (for the purposes of part 21, subpart A, referred to as the *Post-9/11 subsistence allowance*) as specified in paragraph (c) of this section, or payment at the rate of monthly educational assistance allowance payable under 38 U.S.C. chapter 30 for the veteran's type of training. *See* § 21.264(a) for election of payment at the chapter 30 rate and § 21.264(b) for election of the *Post-9/11 subsistence allowance*. *See* §§ 21.7136, 21.7137, and 21.7138 to determine the applicable chapter 30 rate.

(Authority: 38 U.S.C. 3108(a), 3108(b), 3108(f))

(b) *Rate of payment*. VA pays subsistence allowance at the rates stated in the following tables:

(1) Subsistence allowance is paid at the following rates effective October 1, 1994, and before November 2, 1994:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $374.93 | $465.08 | $548.05 | $39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Nonpay or nominal pay on-job training in a Federal, State, or local agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| Nonpay or nominal pay work experience in a Federal, State, or local agency: | | | | |
| Full-time | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Farm cooperative, apprenticeship, or other on-job training: [2] | | | | |
| Full-time only | 327.81 | 396.44 | 456.88 | 29.71 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 374.93 | 465.08 | 548.05 | 39.45 |
| OJT greater than ½ time | 327.81 | 396.44 | 456.88 | 29.71 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 374.93 | 465.08 | 548.05 | 39.95 |
| On-job | 327.81 | 396.44 | 456.88 | 29.71 |

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| ¼ time [3] | 94.24 | 116.78 | 137.27 | 10.24 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(2) Subsistence allowance is paid at the following rates effective November 2, 1994, and before October 1, 1995:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $374.93 | $465.08 | $548.05 | $39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| Farm cooperative, apprenticeship, or other on-job training: [2] | | | | |
| Full-time only | 327.81 | 396.44 | 456.88 | 29.71 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 374.93 | 465.08 | 548.05 | 39.45 |
| OJT greater than ½ time | 327.81 | 396.44 | 456.88 | 29.71 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 374.93 | 465.08 | 548.05 | 39.95 |
| On-job | 327.81 | 396.44 | 456.88 | 29.71 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 374.93 | 465.08 | 548.05 | 39.95 |
| ¾ time | 281.71 | 349.32 | 409.76 | 30.73 |
| ½ time | 188.49 | 233.56 | 274.54 | 20.49 |
| ¼ time [3] | 94.24 | 116.78 | 137.27 | 10.24 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(3) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1995, and before October 1, 1996:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $385.80 | $478.57 | $563.94 | $41.11 |
| ¾ time | 289.88 | 359.45 | 421.64 | 31.62 |
| ½ time | 193.96 | 240.33 | 282.50 | 21.08 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 385.80 | 478.57 | 563.94 | 41.11 |

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or Indian tribe agency: | | | | |
| Full-time | 385.80 | 478.57 | 563.94 | 41.11 |
| ¾ time | 289.88 | 359.45 | 421.64 | 31.62 |
| ½ time | 193.96 | 240.33 | 282.50 | 21.08 |
| Farm cooperative, apprenticeship, or other on-job training (OJT): [2] | | | | |
| Full-time only | 337.32 | 407.94 | 470.13 | 30.57 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 385.80 | 478.57 | 563.94 | 41.11 |
| OJT greater than ½ time [2] | 337.32 | 407.94 | 470.13 | 30.57 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 385.80 | 478.57 | 563.94 | 41.11 |
| On-job [2] | 337.32 | 407.94 | 470.13 | 30.57 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 385.80 | 478.57 | 563.94 | 41.11 |
| ¾ time | 289.88 | 359.45 | 421.64 | 31.62 |
| ½ time | 193.96 | 240.33 | 282.50 | 21.08 |
| ¼ time [3] | 96.97 | 120.17 | 141.25 | 10.54 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(4) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1996, and before October 1, 1997:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $396.22 | $491.49 | $579.17 | $42.22 |
| ¾time | 297.71 | 369.16 | 433.02 | 32.47 |
| ½ time | 199.20 | 246.82 | 290.13 | 21.65 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 396.22 | 491.49 | 579.17 | 42.22 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 396.22 | 491.49 | 579.17 | 42.22 |
| ¾ time | 297.71 | 369.16 | 433.02 | 32.47 |
| ½ time | 199.20 | 246.82 | 290.13 | 21.65 |
| Farm cooperative, apprenticeship, or other on-job training (OJT) [2] | | | | |
| Full-time only | 346.43 | 418.95 | 482.82 | 31.40 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 396.22 | 491.49 | 579.17 | 42.22 |
| OJT greater than ½ time [2] | 346.43 | 418.95 | 482.82 | 31.40 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 396.22 | 491.49 | 579.17 | 42.22 |
| On-job [2] | 346.43 | 418.95 | 482.82 | 31.40 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 396.22 | 491.49 | 579.17 | 42.22 |
| ¾ time | 297.71 | 369.16 | 433.02 | 32.47 |
| ½ time | 199.20 | 246.82 | 290.13 | 21.65 |
| ¼ time [3] | 99.59 | 123.41 | 145.06 | 10.82 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(5) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1997, and before November 1, 1998:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $407.31 | $505.25 | $595.39 | $43.40 |
| ¾ time | 306.05 | 379.50 | 445.14 | 33.38 |
| ½ time | 204.78 | 253.73 | 298.25 | 22.26 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 407.31 | 505.25 | 595.39 | 43.40 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 407.31 | 505.25 | 595.39 | 43.40 |
| ¾ time | 306.05 | 379.50 | 445.14 | 33.38 |
| ½ time | 204.78 | 253.73 | 298.25 | 22.26 |
| Farm cooperative, apprenticeship, or other on-job training (OJT): [2] | | | | |
| Full-time only | 356.13 | 430.68 | 496.34 | 32.28 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 407.31 | 505.25 | 595.39 | 43.40 |
| OJT greater than ½ time [2] | 356.13 | 430.68 | 496.34 | 32.28 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 407.31 | 505.25 | 595.39 | 43.40 |
| On-job [2] | 356.13 | 430.68 | 496.34 | 32.28 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 407.31 | 505.25 | 595.39 | 43.40 |
| ¾ time | 306.05 | 379.50 | 445.14 | 33.38 |
| ½ time | 204.78 | 253.73 | 298.25 | 22.26 |
| ¼ time [3] | 102.38 | 126.87 | 148.09 | 11.12 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(6) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1998, and before October 1, 1999:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional: [1] | | | | |
| Full-time | $413.83 | $513.33 | $604.92 | $44.09 |
| ¾ time | 310.95 | 385.57 | 452.26 | 33.91 |
| ½ time | 208.06 | 257.79 | 303.02 | 22.62 |
| Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: | | | | |
| Full-time only | 413.83 | 513.33 | 604.92 | 44.09 |
| Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 413.83 | 513.33 | 604.92 | 44.09 |
| ¾ time | 310.95 | 385.57 | 452.26 | 33.91 |
| ½ time | 208.06 | 257.79 | 303.02 | 22.62 |
| Farm cooperative, apprenticeship, or other on-job training (OJT): [2] | | | | |
| Full-time only | 361.83 | 437.57 | 504.28 | 32.80 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 413.83 | 513.33 | 604.92 | 44.09 |
| OJT greater than ½ time [2] | 361.83 | 437.57 | 504.28 | 32.80 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 413.83 | 513.33 | 604.92 | 44.09 |
| On-job [2] | 361.83 | 437.57 | 504.28 | 32.80 |
| Improvement of rehabilitation potential: | | | | |
| Full-time only | 413.83 | 513.33 | 604.92 | 44.09 |
| ¾ time | 310.95 | 385.57 | 452.26 | 33.91 |
| ½ time | 208.06 | 257.79 | 303.02 | 22.62 |
| ¼ time [3] | 104.02 | 128.90 | 151.51 | 11.30 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(7) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1999, and before October 1, 2000:

| Type of program | No dependents | One dependent | Two dependents | Additional amount for each dependent over two |
|---|---|---|---|---|
| Institutional:[1] | | | | |
| Full-time | $420.45 | $521.54 | $614.60 | $44.80 |
| ¾ time | 315.93 | 391.74 | 459.50 | 34.45 |
| ½ time | 211.39 | 261.91 | 307.87 | 22.98 |
| Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor; institutional non-farm cooperative: | | | | |
| Full-time only | 420.45 | 521.54 | 614.60 | 44.80 |
| Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency: | | | | |
| Full-time | 420.45 | 521.54 | 614.60 | 44.80 |
| ¾ time | 315.93 | 391.74 | 459.50 | 34.45 |
| ½ time | 211.39 | 261.91 | 307.87 | 22.98 |
| Farm cooperative, apprenticeship, or other on-job training (OJT):[2] | | | | |
| Full-time only | 367.62 | 444.57 | 512.35 | 33.32 |
| Combination of institutional and OJT (Full-time only): | | | | |
| Institutional greater than ½ time | 420.45 | 521.54 | 614.60 | 44.80 |
| OJT greater than ½ time[2] | 367.62 | 444.57 | 512.35 | 33.32 |
| Non-farm cooperative (Full-time only): | | | | |
| Institutional | 420.45 | 521.54 | 614.60 | 44.80 |
| On-job[2] | 367.62 | 444.57 | 512.35 | 33.32 |
| Improvement of rehabilitation potential: | | | | |
| Full-time | 420.45 | 521.54 | $614.60 | $44.80 |
| ¾ time | 315.93 | 391.74 | 459.50 | 34.45 |
| ½ time | 211.39 | 261.91 | 307.87 | 22.98 |
| ¼ time[3] | 105.98 | 130.96 | 153.93 | 11.48 |

[1] For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.
[3] The quarter-time rate may be paid only during extended evaluation.

(Authority: 38 U.S.C. 3108, 3115(a)(1); Pub. L. 103–446)

(c) *Rate of payment of Post-9/11 subsistence allowance.* In lieu of the subsistence allowance payable under paragraph (b) of this section, VA pays the *Post-9/11 subsistence allowance* at the rates in the table at the end of this paragraph, effective August 1, 2011, based on the basic allowance for housing payable under 37 U.S.C. 403. For purposes of the following table:

(1) *BAH* means ''the applicable amount of basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution, agency, or employer providing the rehabilitation program concerned''.

(2) *BAH National Average* means ''the average (*i.e.*, unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 residing in the United States''.

PAYMENT OF POST-9/11 SUBSISTENCE ALLOWANCE IN ACCORDANCE WITH PUBLIC LAW 111–377

[Effective August 1, 2011][1]

| Type of program | Payment |
|---|---|
| Institutional:[2] | |
| Full-time | Entire *BAH* of institution ZIP code. |
| ¾ time | ¾ *BAH* of institution ZIP code. |
| ½ time | ½ *BAH* of institution ZIP code. |

PAYMENT OF POST-9/11 SUBSISTENCE ALLOWANCE IN ACCORDANCE WITH PUBLIC LAW 111–377—Continued

[Effective August 1, 2011] [1]

| Type of program | Payment |
|---|---|
| Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; vocational course in a rehabilitation facility or sheltered workshop; institutional non-farm cooperative: | |
| Full-time only | Entire *BAH* of agency or institution ZIP code. |
| Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency: | |
| Full-time | Entire *BAH* of agency ZIP code. |
| ¾ time | ¾ *BAH* of agency ZIP code. |
| ½ time | ½ *BAH* of agency ZIP code. |
| Farm cooperative, apprenticeship, or other on-job training (OJT): [3] | |
| Full-time only | Entire *BAH* of employer ZIP code. |
| Combination of institutional and OJT (Full-time only): | |
| Institutional greater than ½ time. | Entire *BAH* of institution ZIP code. |
| OJT greater than ½ time [3] | Entire *BAH* of employer ZIP code. |
| Non-farm cooperative (Full-time only): | |
| Institutional | Entire *BAH* of institution ZIP code. |
| On-job [3] | Entire *BAH* of employer ZIP code. |
| Improvement of rehabilitation potential: | |
| Full-time | Entire *BAH* of institution ZIP code. |
| ¾ time | ¾ *BAH* of institution ZIP code. |
| ½ time | ½ *BAH* of institution ZIP code. |
| ¼ time [4] | ¼ *BAH* of institution ZIP code. |
| Training consisting of solely distance learning: [5] | |
| Full-time | ½ *BAH National Average.* |
| ¾ time | ⅜ *BAH National Average.* |
| ½ time | ¼ *BAH National Average.* |
| Training in the home, including independent instructor: | |
| Full-time only | ½ *BAH National Average.* |
| Training in an institution not assigned a ZIP code, including foreign institutions: | |
| Full-time | Entire *BAH National Average.* |
| ¾ time | ¾ *BAH National Average.* |
| ½ time | ½ *BAH National Average.* |

[1] Effective August 1, 2011, the *Post-9/11 subsistence allowance* may be paid in lieu of subsistence allowance authorized in § 21.260(b), and is not adjusted to include dependents.

[2] For measurement of rate of pursuit, see §§ 21.4270 and 21.4272 through 21.4275. Payments for courses being taken simultaneously at more than one institution are based on the *BAH* of the ZIP code assigned to the parent institution.

[3] For on-job training, payment of the *Post-9/11 subsistence allowance* may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

[4] The quarter-time rate may be paid only during extended evaluation.

[5] Payment for training consisting of both distance learning and courses taken at a local institution is based on the *BAH* of the ZIP code assigned to the local institution.

(Authority: 38 U.S.C. 3108, 3115(a)(1))

(d) *Subsistence allowance precluded.* A veteran may not receive a subsistence allowance when VA is providing the veteran only the following services:

(1) Initial evaluation;

(2) Placement and post-placement services under 38 U.S.C. 3105(b); or

(3) Counseling.

(Authority: 38 U.S.C. 3108 (a)(1) and (a)(3))

(e) *Dependents.* The term *dependent* means a spouse, child or dependent parent who meets the definition of relationship specified in § 3.50, § 3.57 or § 3.59 of this chapter.

(Authority: 38 U.S.C. 3108(b))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 9955, Mar. 24, 1986; 52 FR 42113, Nov. 3, 1987; 54 FR 4283, Jan. 30, 1989; 56 FR 7567, Feb. 25, 1991; 60 FR 4561, Jan. 24, 1995; 65 FR 51764, Aug. 25, 2000; 65 FR 60724, Oct. 12, 2000; 76 FR 34000, June 10, 2011; 76 FR 45703, Aug. 1, 2011]

## § 21.262 Procurement and reimbursement of cost for training and rehabilitation services, supplies, or facilities.

(a) *General.* Whenever services, supplies and facilities from source outside VA are required by any of these regulations, they shall be provided through contract, agreement of other cooperative arrangement between VA and the vendor.

(Authority: 38 U.S.C. 3115(b))

(b) *VA Acquisition Regulations.* Payments of charges for training and rehabilition services, supplies, or facilities, authorized under Chapter 31 are subject to the provisions of applicable VA Acquisition Regulations especially 48 CFR part 831 and subpart 871.2.

(Authority: 38 U.S.C. 3115(a))

### § 21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate or election of payment of Post-9/11 subsistence allowance.

(a) *Election of chapter 30 educational assistance rate*—(1) *Eligibility*. A veteran who applies for, and is found entitled to training or education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

(i) The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30;

(ii) The veteran enrolls in a program of education or training approved for benefits under Chapter 30;

(iii) The program of education is part of an IWRP (Individualized Written Rehabilitation Plan) approved by VA.

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(2) *Reelection of subsistence allowance*. Reelection of payment of benefits at the Chapter 31 subsistence allowance rate may be made only after completion of a term, quarter, semester, or other period of instruction unless:

(i) Chapter 30 eligibility or entitlement ends earlier;

(ii) Failure to approve immediate reelection would prevent the veteran from continuing in the rehabilitation program.

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(3) *Services precluded*. A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30 shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:

(i) Subsistence allowances;

(ii) Loans from the revolving fund loan;

(iii) Payment of costs for:

(A) Vocational and other training services;

(B) Supplies; or

(C) Individualized tutorial assistance.

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(4) *Chapter 30 provisions applicable*. A veteran who has elected payment at the Chapter 30 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs.

(b) *Election of payment of Post-9/11 subsistence allowance*—(1) *Eligibility*. Effective August 1, 2011, a veteran who applies and is eligible for training or education under chapter 31 may elect to receive payment of the *Post-9/11 subsistence allowance* under § 21.260(c) in lieu of a subsistence allowance under § 21.260(b), provided the veteran has remaining eligibility for, and entitlement to, educational assistance under chapter 33, Post-9/11 GI Bill.

(2) *Reelection of subsistence allowance under § 21.260(b)*. Reelection of payment of benefits at the chapter 31 subsistence allowance rate under § 21.260(b) may be made only after completion of a term, quarter, semester, or other period of instruction unless:

(i) Chapter 33 eligibility or entitlement ends earlier; or

(ii) Failure to approve immediate reelection would prevent the veteran from continuing in the rehabilitation program.

(3) *Services under chapter 31*. A veteran who elects payment of the *Post-9/11 subsistence allowance* remains entitled to all other services and assistance under chapter 31.

(Authority: 38 U.S.C. 3108(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 76 FR 45704, Aug. 1, 2011]

### § 21.266 Payment of subsistence allowance under special conditions.

(a) *Hospitalized veteran or serviceperson*. A veteran pursuing a VA rehabilitation program under Chapter 31 while hospitalized in a VA medical center or in any other hospital at VA expense may receive the subsistence allowance otherwise payable. The subsistence allowance will be paid at the rates specified in § 21.260, except:

(1) The amount of subsistence allowance or the allowance provided under § 21.264 that may be paid to a veteran pursuing a rehabilitation program for

any month for which the veteran receives compensation at the rate prescribed in § 3.401(h) of this title, as the result of hospital treatment (not including post-hospital convalescence) or observation at the expense of VA may not exceed, when added to any compensation to which such veteran is entitled for the month, an amount equal to the greater of:

(i) The sum of: (A) the amount of monthly subsistence of the allowance payable under § 21.264, and (B) the amount of monthly disability compensation that would be paid to the veteran if he or she was not receiving compensation at the temporary 100 percent rate as the result of such hospital treatment or observation, or

(ii) The amount of monthly disability compensation payable under § 3.401(h) of this title.

(2) A veteran pursuing a rehabilitation program while in post hospital convalescence (§ 3.401(h)) will be paid the regular rate of subsistence allowance.

(3) A serviceperson pursuing a rehabilitation program under Chapter 31 will not receive a subsistence allowance if he or she is hospitalized in a medical facility under the jurisdiction of the Secretary pending final discharge from the armed forces.

(Authority: 38 U.S.C. 3108(h))

(b) *Specialized rehabilitation facility*—(1) A veteran in a specialized rehabilitation facility will be paid the regular rate of subsistence allowance at the institutional rate. VA may pay the cost of room and board in lieu of subsistence allowance when:

(i) The specialized rehabilitation facility requires that similarly circumstanced persons pay the same charges for room and board, and

(ii) The case manager finds and the veteran agrees that it is to the veteran's advantage for VA to pay the cost of room and board.

(2) Even though VA pays the cost of room and board, the veteran will be paid that portion of subsistence allowance otherwise payable for dependents.

(Authority: 38 U.S.C. 3108(e))

(c) *Non-pay work experience or training in a Federal agency*. A veteran in an on-job program or being provided work experience in a Federal agency at no or nominal pay shall receive subsistence allowance at the institutional rate.

(Authority: 38 U.S.C. 3108(c))

(d) *Extended evaluation and independent living program*. A veteran in a program of extended evaluation or independent living service program shall be paid subsistence allowance for full or part-time participation at the rate specified for institutional training in § 21.260. If an extended evaluation or independent living program is pursued on a less than a quarter-time basis, as measured under § 21.310(d), VA will only pay established charges for services furnished.

(Authority: 38 U.S.C. 3108(h))

(e) *On-job training*. A veteran in an on-job training program will be paid subsistence allowance at the rate provided under § 21.260(b), except that subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(Authority: 38 U.S.C. 3108(c))

**§ 21.268 Employment adjustment allowance.**

(a) *General*. A veteran who completes a period of rehabilitation and reaches the point of employability will be paid an employment adjustment allowance for a period of two months at the full-time subsistence allowance rate for the type of program the veteran was last pursuing. (See § 21.190(d))

(Authority: 38 U.S.C. 3108(a))

(b) *Reelection of subsistence allowance*. A veteran who has elected payment at the Chapter 30 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelects subsistence allowance to become effective no later than the day following completion of the period of rehabilitation to the point of employability.

(Authority: 38 U.S.C. 3108(f))

(c) *Special programs.* An employment adjustment allowance will be paid at the institutional rate of subsistence allowance for veterans in any of the following programs:

(1) On-job training at no or nominal pay in a Federal agency;

(2) Training in the home program;

(3) Independent instructor program;

(4) Cooperative program; or

(5) Self-employment program.

(d) *Combination program.* A veteran who has pursued a combination program will be paid an employment adjustment allowance at the full-time rate for the type of training the veteran was actually pursuing at the completion of the period of rehabilitation to the point of employability.

(e) *Subsequent payments of employment adjustment allowance.* If a veteran has ever received an employment adjustment allowance following rehabilitation to the point of employability, he or she may, nevertheless, receive it again when completing an additional rehabilitation program to the point of employability if:

(1) The prior determination of rehabilitation to the point of employability is set aside; and

(2) The veteran is reinducted into a new vocational rehabilitation program as provided in § 21.282.

(f) *Special situations.* Effective August 6, 2013, a veteran who has been displaced as the result of a natural or other disaster while being paid an employment adjustment allowance may receive up to an additional two months of employment adjustment allowance, if satisfactorily following a program of employment services.

(Authority: 38 U.S.C. 3108(a)(2))

(g) *Employment adjustment allowance not charged against entitlement.* An employment adjustment allowance will not be charged against the veteran's basic entitlement.

(Authority: 38 U.S.C. 3108(a))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 79 FR 15921, Mar. 24, 2014]

### § 21.270 Payment of subsistence allowance during leave and other periods.

(a) *Payment during leave.* VA will pay an eligible veteran a subsistence allowance during any period of approved leave including a veteran:

(1) Receiving medical or rehabilitation services on an outpatient basis at a VA medical center, and who provides his or her own room and board;

(2) Receiving service department retirement or retained pay while not on active duty;

(3) Hospitalized at a VA medical center while on approved leave. If the veteran becomes eligible for payment of disability compensation at the temporary 100 percent rate, under § 3.401(h) of this title due to hospitalization, payment will be made under provisions of § 21.266(a).

(Authority: 38 U.S.C. 3110)

(b) *Payment for other periods.* Subsistence allowance will be paid for:

(1) Weekend and legal holidays, or customary vacation periods associated with them;

(2) Periods in which the school is closed temporarily under emergency conditions described in § 21.4138(f).

(Authority: 38 U.S.C. 3680(a))

[49 FR 40814, Oct. 18, 1984, as amended at 76 FR 45705, Aug. 1, 2011]

### § 21.272 Veteran-student services.

(a) *Eligibility.* Veterans who are pursuing a rehabilitation program under chapter 31 on a three-quarter or full-time basis are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(b) *Selection criteria.* Whenever feasible, VA will give priority to veterans with service-connected disabilities rated at 30 percent or more disabling in selection of recipients of this allowance. VA shall consider the following additional selection criteria:

(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 rate;

(2) Motivation of the veteran; and

(3) Compatibility of the work assignment with the veteran's physical condition.

(Authority: 38 U.S.C. 3104(a)(4), 3108(f), 3485)

(c) *Utilization*. Veteran-student services may be utilized in connection with:

(1) VA outreach service program as carried out under the supervision of a VA employee;

(2) Preparation and processing of necessary VA papers and other documents at educational institutions, regional offices or other VA facilities;

(3) Hospital and domiciliary care and medical treatment at VA facilities; and

(4) Any other appropriate activity of VA.

(d) *Rate of payment*. (1) In return for the veterans' agreement to perform services for VA totaling 25 times the number of weeks contained in an enrollment period, VA will pay an allowance equal to the higher of:

(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or

(ii) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.

(2) VA will pay proportionately less to a veteran who agrees to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(e) *Payment in advance*. VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract (but not more than an amount equal to 50 times the applicable hourly minimum wage).

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(f) *Veteran reduces rate of training*. In the event the veteran reduces his or her training to less than three-quarter time before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be at least a three-quarter time student.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

(g) *Veteran terminates training*. If the veteran terminates all training before completing an agreement, VA:

(1) Will permit him or her to complete the portion of the agreement represented by the sum of money VA has advanced to the veteran for which he or she has not performed any services; but

(2) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(h) *Indebtedness for unperformed service*. (1) If the veteran has received an advance for hours of unperformed service that remain after application of paragraphs (f) and (g) of this section, that advance:

(i) Will be a debt due the United States; and

(ii) Will be subject to recovery in the same manner as any other debt due the United States;

(2) For each hour of unperformed service, the amount of indebtedness shall equal the hourly wage upon which the contract was made.

(i) *Survey*. VA will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively.

(Authority: 38 U.S.C. 3104(a)(4), 3485)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 54 FR 4284, Jan. 30, 1989, as amended at 56 FR 14648, Apr. 11, 1991; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997]

### § 21.274 Revolving fund loan.

(a) *Establishment of revolving fund loan*. A revolving fund is established to provide advances to veterans who would otherwise be unable to begin or continue in a rehabilitation program without such assistance.

(b) *Definition*. The term *advance* means a non-interest loan from the revolving fund.

(c) *Eligibility*. A veteran is eligible for an advance if the following conditions are present:

(1) An Individualized Written Rehabilitation Plan, Individualized Extended Evaluation Plan, or Individualized Independent Living Plan has been prepared; and

(2) The veteran and VA staff agree on the terms and conditions of the plan.

(d) *Advance conditions.* (1) An advance may be approved when the following conditions are met:

(i) The purpose of the advance is clearly and directly related to beginning, continuing, or reentering a rehabilitation program;

(ii) The veteran would otherwise be unable to begin, continue or reenter his or her rehabilitation program;

(iii) The advance does not exceed either the amount needed, or twice the monthly subsistence allowance for a veteran without dependents in full-time institutional training specified in § 21.260(b); and

(iv) The veteran has elected, or is in receipt of, subsistence allowance.

(2) An advance may not be made to a veteran who meets conditions described in paragraph (d)(1) of this section if the veteran:

(i) Has not fully repaid an advance;

(ii) Does not agree to the terms and conditions for repayment; or

(iii) Will not be eligible in the future for payments of pension, compensation, subsistence allowance, educational assistance, or retired pay.

(e) *Determination of the amount of the advance.* (1) If the conditions described in paragraphs (c) and (d)(2) of this section are met, a counseling psychologist or vocational rehabilitation specialist in the VR&E Division will:

(i) Document the findings; and

(ii) Determine the amount of the advance.

(2) Loans will be made in multiples of $10.

(f) *Repayment*—(1) *Offset possible.* The amount advanced will be repaid in monthly installments from future VA payments for compensation, pension, subsistence allowance, educational assistance allowance or retired pay.

(i) Repayment will begin on the earlier of the following dates:

(A) The first day of the month following the month in which the advance is granted; or

(B) The first day of the month after receipt of the advance in which the veteran receives a subsistence allowance

(ii) The VR&E staff person who approves the advance will determine the rate of repayment.

(iii) The monthly rate of repayment may not be less than 10 percent of the amount advanced unless the monthly benefit against which the advance is being offset is less than that amount.

(2) *Offset not possible.* If the amount advanced cannot be repaid from the benefits cited in paragraph (f)(1) of this section because the veteran is not in receipt of any of these benefits, collection of the amount due will be made in the same manner as any other debt payable to VA.

(Authority: 38 U.S.C. 3112)

[49 FR 40814, Oct. 18, 1984, as amended at 76 FR 45705, Aug. 1, 2011]

### § 21.276 Incarcerated veterans.

(a) *General.* The provisions contained in this section describe the limitations on payment of subsistence allowance and charges for tuition and fees for:

(1) Incarcerated veterans;

(2) Formerly incarcerated veterans in halfway houses; and

(3) Incarcerated and formerly incarcerated veterans in work release programs.

(Authority: 38 U.S.C. 3108(g), 3680(a))

(b) *Definition.* The term *incarcerated veteran* means any veteran incarcerated in a Federal, State, or local prison, jail, or other penal institution for a felony. It does not include any veteran who is pursuing a rehabilitation program under Chapter 31 while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(c) *Subsistence allowance not paid to an incarcerated veteran.* A subsistence allowance may not be paid to an incarcerated veteran convicted of a felony, but VA may pay all or part of the veteran's tuition and fees.

(Authority: 38 U.S.C. 3108(g))

(d) *Halfway house.* A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while

residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.

(Authority: 38 U.S.C. 3108(a))

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

(f) *Services.* VA may provide other appropriate services, including but not limited to medical, reader service, and tutorial assistance necessary for the veteran to pursue his or her rehabilitation program.

(Authority: 38 U.S.C. 3108(g))

(g) *Payment of allowance at the rates paid under Chapter 30.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30.

(Authority: 38 U.S.C. 3108(f), 3680(a))

(h) *Apportionment.* Apportionment of subsistence allowance which began before October 17, 1980 made to dependents of an incarcerated veteran convicted of a felony may be continued.

(Authority: 38 U.S.C. 3108(g))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22807, June 23, 1986; 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

INDUCTION INTO A REHABILITATION PROGRAM

### § 21.282 Effective date of induction into a rehabilitation program; retroactive induction.

(a) *Entering a rehabilitation program.* The effective date of induction into a rehabilitation program is governed by the provisions of §§ 21.320 through 21.334, except as provided in this section.

(Authority: 38 U.S.C. 3108, 5113)

(b) *Retroactive induction.* Subject to paragraphs (c) and (d) of this section, an individual may be inducted into a rehabilitation program on a retroactive basis. If the individual is retroactively inducted, VA may authorize payment pursuant to § 21.262 or § 21.264 for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. In addition, VA may authorize payment of subsistence allowance pursuant to §§ 21.260, 21.266, and 21.270 for the period of retroactive induction, except for any period during which the individual was on active duty.

(Authority: 38 U.S.C. 3108, 3113, 3681, 5113)

(c) *Conditions for retroactive induction.* Retroactive induction into a rehabilitation program may be authorized for a past period under a claim for vocational rehabilitation benefits when all of the following conditions are met:

(1) The past period is within—

(i) A period under § 21.40(c) during which a servicemember was awaiting discharge for disability; or

(ii) A period of eligibility under §§ 21.41 through 21.44 or 38 U.S.C. 3103.

(2) The individual was entitled to disability compensation under 38 U.S.C. chapter 11 during the period or would likely have been entitled to that compensation but for active-duty service.

(3) The individual met the criteria for entitlement to vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 in effect during the period.

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (*see* §§ 21.80 through 21.88, and §§ 21.92 through 21.98).

(5) VA has recouped any benefits that it paid the individual for education or training pursued under any VA education program during any portion of the period.

(6) An initial evaluation was completed under § 21.50.

(7) A period of extended evaluation is not needed to be able to determine the

reasonable feasibility of the achievement of a vocational goal.

(Authority: 38 U.S.C. 3102, 3103, 3108, 5113)

(d) *Effective date for retroactive induction.* The effective date for retroactive induction is the date when all the entitlement conditions set forth in paragraph (c) of this section are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating under 38 U.S.C. chapter 11 establishing a qualifying level under § 21.40 of service-connected disability.

(Authority: 38 U.S.C. 5113)

[75 FR 3165, Jan. 20, 2010]

### § 21.283 Rehabilitated.

(a) *General.* For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101 (1), (2))

(b) *Definition.* The term ''suitably employed'' includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veterans's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veterans's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(d) *Rehabilitation to the point of employability has not been completed.* A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

(1) The veteran obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation.

(2) The employment obtained is consistent with the veterans's abilities, aptitudes and interests.

(3) Maximum services feasible to assist the veteran to retain the employment obtained have been provided.

(4) The veteran has maintained the employment for at least 60 continuous days.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(e) *Independent living.* A veteran who has pursued a program of independent living services will be considered rehabilitated when all goals of the program have been achieved, or if not achieved, when:

(1) The veteran, nevertheless, has attained a substantial increase in the

level of independence with the program assistance provided;

(2) The veteran has maintained the increased level of independence for at least 60 days; and

(3) Further assistance is unlikely to significantly increase the veteran's level of independence.

(Authority: 38 U.S.C. 3101 (1), (2) 3107)

[58 FR 68768, Dec. 29, 1993]

**§ 21.284 Reentrance into a rehabilitation program.**

(a) *Reentrance into rehabilitation to the point of employability following a determination of rehabilitation.* A veteran who has been found *rehabilitated* under provisions of § 21.283 may be provided an additional period of training or services only if the following conditions are met:

(1) The veteran has a compensable service-connected disability and either;

(2) Current facts, including any relevant medical findings, establish that the veteran's service-connected disability has worsened to the extent that the effects of the service-connected disability considered in relation to other facts precludes him or her from performing the duties of the occupation for which the veteran previously was found rehabilitated; or

(3) The occupation for which the veteran previously was found rehabilitated under Chapter 31 is found to be unsuitable on the basis of the veteran's specific employment handicap and capabilities.

(Authority: 38 U.S.C. 3101(a))

(b) *Reentrance into a program of independent living services following a determination of rehabilitation.* A finding of rehabilitation following a program of independent living services may only be set aside, and an additional period of independent living services provided, if the following conditions are met:

(1) Either:

(i) The veteran's condition has worsened and as a result the veteran has sustained a substantial loss of independence; or

(ii) Other changes in the veteran's circumstances have caused a substantial loss of independence; and

(2) The provisions of § 21.162 pertaining to participation in a program of independent living services are met.

(Authority: 38 U.S.C. 3109)

(c) *Reentrance into rehabilitation to the point of employability during a period of employment services.* A finding of rehabilitation to the point of employability by VA may be set aside during a period of employment services and an additional period of training and related services provided, if any of the following conditions are met:

(1) The conditions for setting aside a finding of rehabilitation under paragraph (a) of this section are found;

(2) The rehabilitation services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued rehabilitation;

(3) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability should not reasonably have been expected at the time the program was originally developed; or

(4) The veteran, because of technological change which occurred subsequent to the declaration of rehabilitation to the point of employability, is no longer able:

(i) To perform the duties of the occupation for which he or she trained, or in a related occupation; or

(ii) To secure employment in the occupation for which he or she trained, or in a related occupation.

(Authority: 38 U.S.C. 3117)

[49 FR 40814, Oct. 18, 1984, as amended at 58 FR 68769, Dec. 29, 1993]

COURSE APPROVAL AND FACILITY SELECTION

**§ 21.290 Training and rehabilitation resources.**

(a) *General.* For the purpose of providing training and rehabilitation services under Chapter 31 VA may:

(1) Use facilities, staff and other resources of VA;

(2) Employ any additional personnel and experts needed;

(3) Use the facilities and services of any:

(i) Federal agency;

(ii) State agency;

(iii) Other public agency; or

(iv) Agency maintained by joint Federal and state contributions.

(4) Use the facilities and services of any:

(i) Public institution or establishment;

(ii) Private institution or establishment; or

(iii) Private individual.

(b) *Agreement required.* Use of facilities and services provided under paragraph (a) of this section shall be procured through contract, agreement, or other cooperative arrangement. The specific requirements for use of contracts or other arrangements are described in 48 CFR 871.2.

(Authority: 38 U.S.C. 3115)

### § 21.292 Course approvals.

(a) *Courses must be approved.* Only those courses approved by the Department of Veterans Affairs shall be utilized to provide training and rehabilitation services under Chapter 31.

(Authority: 38 U.S.C. 3106)

(b) *General.* VA staff in consultation with the veteran will select courses and services needed to carry out the rehabilitation plan only from those which VA determines are offered by a training or rehabilitation facility which:

(1) Meets the requirements of §§ 21.120 through 21.162;

(2) Meets the criteria of §§ 21.290 through 21.299; and

(3) Is in compliance with Title VI of the Civil Rights Act of 1964, section 503(a) Veterans Readjustment Act of 1972, and sections 501 through 504 of the Rehabilitation Act of 1973.

(c) *Obtaining information necessary for approval.* In determining whether services and courses may be approved for a veteran's training and rehabilitation under Chapter 31, the Department of Veterans Affairs may use information relevant to the approval or certification of such services and courses for similar purposes developed by:

(1) The State approving agencies;

(2) The Department of Labor;

(3) State vocational rehabilitation agencies;

(4) Nationally recognized accrediting associations;

(5) The Committee on Accreditation of Rehabilitation Facilities; and

(6) Other organizations and agencies.

(d) *Course not approved.* If a course or program is not approved by one of the agencies identified in paragraph (c) of this section, VR&E staff shall develop necessary information to determine whether criteria given in paragraphs (a) and (b) of this section are met.

(e) *Course disapproved.* The VR&E Officer may approve for 38 U.S.C. chapter 31 use courses that one of the agencies in paragraph (c) of this section has disapproved.

(Authority: 38 U.S.C. 3115)

[49 FR 40814, Oct. 18, 1984, as amended at 62 FR 17709, Apr. 11, 1997]

### § 21.294 Selecting the training or rehabilitation facility.

(a) *Criteria the facility must meet.* In addition to approval of the courses offered, all facilities which provide training and rehabilitation services under Chapter 31 must meet the criteria contained in §§ 21.290 through 21.299 applicable to the type of facility. Each facility must:

(1) Have space, equipment, instructional material and instructor personnel adequate in kind, quality, and amount to provide the desired service for the veteran;

(2) Fully accept the obligation to give the training or rehabilitation services in all parts of the plan which call for the facility's participation;

(3) Provide courses or services which:

(i) Meet the customary requirements in the locality for employment in the occupation in which training is given when employment is the objective of the program; and

(ii) Meet the requirements for licensure or permit to practice the occupation, if such is required;

(4) Agree:

(i) To cooperate with VA, and

(ii) To provide timely and accurate information covering the veteran's attendance, performance, and progress in

training in the manner prescribed by VA.

(b) *Selecting a facility for provision of independent living services.* (1) Facilities offering independent living services will be utilized to:

(i) Evaluate independent living potential;

(ii) Provide a program of independent living services to veterans for whom an IILP (Individualized Independent Living Plan) has been developed; or

(iii) Provide independent living services to veterans as part of an IWRP (Individualized Written Rehabilitation Plan) or an IEEP (Individualized Extended Evaluation Plan).

(2) VA may use public and nonprofit agencies and facilities to furnish independent living services. Public and nonprofit facilities may be:

(i) Veterans Health Administration (VHA) facilities that provide independent living services;

(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services;

(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by VA as able to provide the services necessary in an individual veteran's case.

(3) VA also may use for-profit agencies and organizations to furnish programs of independent living services only if services comparable in effectiveness to those provided by for-profit agencies and organizations:

(i) Are not available through public or nonprofit agencies or VHA; or

(ii) Cannot be obtained cost-effectively from public or nonprofit agencies or VHA.

(4) In addition to the criteria described in paragraph (b)(3)(i) of this section for public and private nonprofit agencies; for-profit agencies and organizations must meet any additional standards established by local, state (including the State rehabilitation agency), and Federal agencies which are applicable to for-profit facilities and agencies offering independent living services.

(Authority: 38 U.S.C. 3115, 3120)

(c) *Use of facilities.* VA policy shall be to use VA facilities, if available, to provide rehabilitation services for veterans in a rehabilitation program under chapter 31. Non-VA facilities may be used to provide rehabilitation services only when necessary services are not readily available at a VHA facility. This policy shall be implemented in accordance with the provisions of paragraph (b) of this section in the case of the use of for-profit facilities to provide programs of independent living services, or in the case of employment services, provision of such services by non-VA sources is permitted under § 21.252.

(Authority: 38 U.S.C. 3115)

(d) *Selection of individual to provide training or rehabilitation services.* Persons selected to provide individual instruction or other services as part of a program leading to the long-range goal of a veteran's plan must meet one of the following criteria:

(1) State requirements for teaching in the field or occupation for which training is being provided; or

(2) Expertise demonstrated through employment in the field in which the veteran is to be trained; or

(3) Requirements established by professional associations to provide the services needed by the veteran.

(e) *Relatives.* Relatives of the veteran may not be selected to provide services, even if otherwise qualified, unless such use is specifically permitted by VA regulation governing provision of the service. Selection of a training or rehabilitation facility owned by the veteran or a relative, or in which the veteran or a relative of the veteran has an interest is precluded, except for selection of a farm as provided in § 21.298. The term relative has the same meaning as in § 21.374.

(f) *Contracts or agreements required.* The Department of Veterans Affairs will negotiate formal contracts for reimbursement to providers of services as requred by § 21.262. However, a letter contract will be effected immediately to permit the induction of the veteran into a program if:

(1) The veteran is immediately entered into a school with which a contract is required;

(2) The veteran's rehabilitation plan will be jeopardized by withholding services until a contract can be completed; and

(3) There are no known reasons to indicate that a contract may not be completed in a reasonable time.

(Authority: 38 U.S.C. 3115)

(g) *Training outside the United States.* VA may only use those facilities and courses outside the United States to provide training under Chapter 31 which meet requirements for approval under §§ 21.4250(c) and 21.4260. The conditions under which training outside the United States may be approved are contained in § 21.130.

(Authority: 38 U.S.C. 3114)

(h) *Flight training.* Flight training may only be provided in educational institutions which offer a standard college degree. The specific conditions under which flight training may be approved are contained in § 21.134.

(Authority: 38 U.S.C. 3115)

(i) *Additional consideration.* The case manager will consider the veteran's preference for a particular training or rehabilitation facility but VA has final responsibility for selection of the facility.

(Authority: 38 U.S.C. 3115)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 53 FR 50958, Dec. 19, 1988; 55 FR 42187, Oct. 18, 1990; 62 FR 17709, Apr. 11, 1997]

### § 21.296 Selecting a training establishment for on-job training.

(a) *Additional criteria for selecting a training establishment.* In addition to meeting all of the requirements of § 21.294 the training establishment must:

(1) Sign an agreement to provide on-job training to disabled veterans;

(2) Provide continuous training for each veteran without interruption except for normal holidays and vacation periods;

(3) Provide daytime training for the veteran except when the veteran cannot obtain necessary on-job or related training during the working hours of the day;

(4) Modify the program when necessary to compensate for the limitations resulting from the veteran's disability or needs;

(5) Organize training into definite steps or units which will result in progressive training;

(6) Encourage rapid progress of each veteran rather than limit the progress of the individual to the progress of the group;

(7) Not, during the period of training, use the veteran on production activities beyond the point of efficient training;

(8) Agree to pay the veteran during training (except as provided in paragraph (b) of this section) a salary or wage rate;

(i) Commensurate with the value of the veteran's productive labor,

(ii) Not less than that prescribed by the Fair Labor Standards Act of 1938, as amended, and

(iii) Not less than that customarily paid to nonveteran-trainees in the same or similar training situation;

(9) Agree to provide the veteran with employment at the end of the training program, provided the veteran's conduct and progress have been satisfactory; and

(10) Agree to furnish VA a statement in writing showing wages, compensation, and other income paid directly or indirectly to each veteran in training under Chapter 31 during the month.

(Authority: 38 U.S.C. 3108(c), 3115)

(b) *On-job training at subminimum wage rates.* A subminimum hourly wage rate for handicapped workers may be considered where necessary in order to prevent curtailment of opportunities for employment. Payment at the subminimum rate must be approved by the Wage and Hour Division of the Department of Labor.

(Authority: 38 U.S.C. 3115)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.298 Selecting a farm.

(a) *Control of the farm—farm operator.* A farm selected for farm cooperative training must be under the control of

the veteran by ownership, lease or other written tenure arrangement. If the veteran does not own the farm, the lease or other written agreement shall:

(1) Afford the veteran control of the farm at least until the end of his or her course;

(2) Allow the veteran's control to be such that he or she is able:

(i) To carry out the provisions of the training program; and

(ii) To operate the farm in accordance with the farm and home plan developed by the case manager and the veteran in collaboration with the instructor, and when appropriate, the landowner or lessor;

(3) Permit instruction in the planning, management, and operation of farming enterprise in the veteran's farm and home plan;

(4) At least by the end of the necessary minimum period of training, assure the veteran a reasonably satisfactory living under normal economic conditions;

(5) Provide for the necessary buildings and equipment to enable the veteran to satisfactorily begin pursuit of the course of farm cooperative training;

(6) Provide for resources which give reasonable promise that any additional items required for the pursuit of the course, including livestock, will be available as they become necessary;

(7) Provide for capital improvements to be made which are necessary for carrying out the farm and home plan, with the veteran furnishing no greater portion of the costs than the benefits accruing to the veteran warrant; and

(8) Provide for the landowner or leasor to share the costs of improved practices put into effect in proportion to the returns he or she will receive from such practices.

(b) *Farms on which more than one person trains—farm operator*. If a veteran in training is a partner of another person or if more than one person is involved in operating the farm, the farm shall be of such size and character that the farm:

(1) Together with the instruction part of the course will occupy the full time of the veteran; and

(2) Meets all requirements of paragraph (a) of this section.

(c) *Selecting a farm—farm manager*. The farm on which a veteran trains to become a farm manager shall be of such size and character that, together with the group instruction part of the course the farm:

(1) Will occupy the full time of the veteran;

(2) Will permit instruction in all aspects of the management and operation of a farm of the type for which the veteran is being trained; and

(3) Meets the requirements of paragraph (a) of this section.

(d) *Employer agreement*. VA may approve a farm on which a veteran is to train to become a farm manager only if the employer-trainer agrees:

(1) To instruct the veteran in various aspects of farm management in accordance with the individual's plan;

(2) To pay the veteran for each successive period of training a salary or wage rate:

(i) Commensurate with the value of the veteran's productive labor; and

(ii) Not less than that customarily paid to a nonveteran trainee in the same or similar training situation in that community; and

(3) To employ the veteran as a manager of the farm on which he or she is being trained if his or her conduct and progress remain satisfactory, or assure that the veteran will be employed as manager of a specified comparable farm.

(Authority: 38 U.S.C. 3115)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.299 Use of Government facilities for on-job training or work experience at no or nominal pay.

(a) *Types of facilities which may be used to provide training*. Notwithstanding any other provision of regulations governing chapter 31, the facilities of any agency of the United States or of any State or local government receiving Federal financial assistance may be used to provide training or work experience at no or nominal pay as all or part of the veteran's program of vocational training under §§ 21.123, 21.294, and 21.296 of this part. The counseling psychologist and case manager must determine that the training work experience is necessary to accomplish

vocational rehabilitation and providing such training or work experience is in the best interest of the veteran and the Federal government.

(Authority: 38 U.S.C. 3115, Pub. L. 100–689)

(b) *Employment status of veterans.* (1) While pursuing on-job training or work experience in a facility of the United States, a veteran:

(i) Shall be deemed to be an employee of the United States for the purposes of benefits under chapter 81, title 5 U.S.C.; but

(ii) Shall not be deemed an employee of the United States for the purpose of laws administered by the Office of Personnel Management.

(2) While pursuing on-job training or work experience in a State or local government agency the veteran shall have the employment status and rights comparable to those provided in paragraph (b)(1) of this section for a veteran pursuing on-job training or work experience at a Federal agency.

(Authority: 38 U.S.C. 3115, Pub. L. 100–689)

(c) *Terms applicable to training in State and local government.* (1) The term *State* means each of the several States Territories, any possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 38 U.S.C. 101(20))

(2) The term *local government agency* means an administrative subdivision of a government including a county, municipality, city, town, township, public authority, district, school district, or other such agency or instrumentality of a local government.

(3) The term *Federal financial assistance* means the direct or indirect provision of funds by grant, loan, contract, or any other arrangement by the Federal government to a State or local government agency.

(d) *Additional considerations in providing on-job training and work experience in State and local government agencies.* (1) The veteran's progress and adjustment in a rehabilitation program conducted wholly or in part at a State or local government agency shall be closely monitored by VR&E staff members to assure that:

(i) Training and rehabilitation services are provided in accordance with the veteran's rehabilitation plan. The plan shall provide for:

(A) Close supervision of the veteran's progress and adjustment by the case manager during the period he or she is at the State or local government agency; and

(B) The employer's periodic certification (not less than once every three months) that the veteran's progress and adjustment are in accordance with the program which has been jointly developed by VA, the veteran and the employer; and

(ii) The veteran achieves his or her employment goal.

(2) Training may not be provided for a position which involves religious or political activities;

(3) The veteran's training:

(i) Will not result in the displacement of currently employed workers; and

(ii) Will not be in a job while another person is laid off from a substantially equivalent job, or will not be in a job the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its workforce with the intention of using the opening for a Chapter 31 trainee.

(Authority: Pub. L. 100–689)

[55 FR 3739, Feb. 5, 1990]

RATE OF PURSUIT

### § 21.310 Rate of pursuit of a rehabilitation program.

(a) *Programs offered at educational institutions.* This section provides policy for determining the full-time and part-time rate of pursuit of a rehabilitation program by a veteran whose ability to pursue a program has not been reduced by the effects of disability.

(1) *Measuring full and part-time training.* VA will measure the full-time and part-time rate of pursuit of training offered at educational institutions according to the criteria found in §§ 21.4270 through 21.4275, except as provided in paragraphs (a) (2) and (3) of this section.

(2) *Independent study course.* (i) For certain seriously disabled veterans described in subdivision (i)(A) of this subparagraph VA may measure the veteran's enrollment:

(A) In an independent study course as half-time or greater training, or

(B) Both in independent study subjects and subjects requiring class attendance on the basis of the combined training load when the number of credit hours of independent study equals or exceeds the number of other credit hours.

(ii) To qualify for measurement described in paragraph (a)(2)(i) of this section:

(A) The seriously disabled veteran must have a disability or circumstances which preclude regular attendance at an institution of higher learning, and

(B) Independent study must be a sound method for providing the training necessary for restoring the veteran's employability.

(iii) In all other cases VA will measure independent study according to the provisions of § 21.4280.

(3) *Special school.* If training is pursued in a special school, such as those for persons with visual or hearing disabilities, the rate of pursuit will be measured under §§ 21.2470 through 21.4275 unless it is the established policy of the school to measure the rate of pursuit for full-time or particular level or part-time training based upon fewer semester, credit, or clock hours of attendance than prescribed in these regulations.

(4) *Farm cooperative.* If training in a farm cooperative program is provided by an educational institution, the rate of pursuit shall be determined the same as under § 21.4270 for that type of training.

(5) *Course offered under contract.* When a school or other entity furnishes all or part of a vocational rehabilitation program under contact with another school, VA will measure the course or courses as appropriate for the school or other entity actually providing the training.

(b) *Education or training not furnished by an educational institution.* The following types of training which are not furnished by an educational institution (§ 21.35(k)(3) may only be pursued full-time:

(1) *On-job training.* Full-time training in an on-job program is the lesser of the number of hours in the prevailing workweek for:

(i) Journeyman employees in the same job categories at the establishment where training is being provided;

(ii) Other persons in on-job training for the same or similar occupations at the facility where the veteran is training or at other facilities in the locality.

(2) *Farm cooperative training.* If training in a farm cooperative program is provided by an individual instructor, the full-time rate of pursuit must meet the requirements of § 21.126.

(3) *Independent instructor.* The full-time rate of pursuit for a veteran in an independent instructor program must meet the requirements of § 21.146.

(4) *Training in the home.* The full-time rate for a training program provided in the veteran's home must meet the requirements of § 21.146.

(5) *Vocational course in a rehabilitation facility or sheltered workshop.* A vocational course of training offered by a rehabilitation facility or sheltered workshop (§ 21.35(k) (5) and (6)), will be measured under provisions of § 21.4270(b) for trade or technical non-accredited courses, unless it is the established policy of the facility to measure the rate of pursuit for full-time or a particular level of part-time training based upon fewer clock hours of attendance than provided in that regulation.

(c) *Combination and cooperative programs.* The rate of pursuit of a program which combines institutional training and on job training will be measured as follows:

(1) The institutional part will be assessed under §§ 21.4270 through 21.4275, and

(2) The on-the-job part will be assessed under paragraph (b)(1) of this section.

(d) *Rehabilitative services.* Measurement of the rate of pursuit for veterans in programs consisting primarily of services designed to evaluate and improve physical and psychological functioning will be assessed under this paragraph.

(1) The services assessed under this paragraph include:

(i) Evaluation and improvement of the rehabilitation potential of a veteran for whom attainment of a vocational goal is reasonably feasible;

(ii) Extended evaluation to determine whether attainment of a vocational goal is reasonably feasible; or

(iii) A program of independent living services to enable a veteran to function more independently in his or her family and community when attainment of a vocational goal is not reasonably feasible.

(2) Measurement of the rate of pursuit for services and programs named in paragraph (d)(1) of this section will be:

(i) As provided in paragraph (a) of this section for services furnished by educational institutions; or

(ii) According to the noneducational facility's customary criteria for full-time and part-time pursuit. If the facility does not have established criteria for full-time and part-time pursuit, or services are being provided by more than one facility, the rate of pursuit will be assessed in the following manner:

| Rate of pursuit | Clock hours per month |
|---|---|
| Full-time | 120 or more. |
| Three-quarter time [1] | 90–119. |
| Half-time [1] | 60–89. |
| Quarter-time [1] | 30–59. |

[1] Extended evaluation and independent living.

(Authority: 38 U.S.C. 3108(d))

### § 21.312 Reduced work tolerance.

(a) *General.* VA will consider that a veteran with reduced work tolerance is pursuing a rehabilitation program full-time when the amount of time the veteran is devoting to his or her program is as great as the effects of his or her disability (service and nonservice-connected) will permit.

(b) *Pursuit of a program.* A veteran with reduced work tolerance may pursue a rehabilitation program when the following conditions are met:

(1) Reduced work tolerance has been determined.

(2) Achievement of the goals of the program are reasonably feasible;

(3) The IWRP (Individualized Written Rehabilitation Plan) or other plan provides for completion of the program under Chapter 31.

(c) *Redetermination of work tolerance.* As necessary, but not less than once yearly, the veteran's work tolerance will be reevaluated. The rate of pursuit required to meet the standard of full-time pursuit will be modified if there is either an increase or decrease in the work tolerance of the veteran.

(d) *Payment of allowance.* A veteran with a reduced work tolerance will be paid a subsistence allowance, at the full-time rate for the type of program being pursued, when the veteran meets the standard for full-time pursuit established for him or her in the Plan. A veteran with reduced work tolerance, who elects benefits at the Chapter 34 rate, will have to meet normal attendance requirements for that chapter, however.

(e) *Determining work tolerance.* A VA physician will make all determinations and redeterminations of work tolerance.

(Authority: 38 U.S.C. 3108(d))

### § 21.314 Pursuit of training under special conditions.

A veteran is required to pursue a rehabilitation program at a rate which meets the requirement for full- or part-time participation described in §§ 21.310 and 21.312. However, a veteran may pursue a rehabilitation program at a lesser rate, if such pursuit is a part of the veteran's plan. Subsistence allowance is not payable during such periods.

(Authority: 38 U.S.C. 3108(d))

## AUTHORIZATION OF SUBSISTENCE ALLOWANCE AND TRAINING AND REHABILITATION SERVICES

### § 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

Awards providing for payment of a subsistence allowance and authorization of services necessary for rehabilitation may be prepared when an IWRP (Individualized Written Rehabilitation Plan) or other plan has been completed and other requirements for entrance or reentrance into a rehabilitation program have been met.

(a) *Commencing date of subsistence allowance*. The commencing date of an award of subsistence allowance will be determined under the provisions of § 21.322.

(b) *Commencing date of authorization of training and rehabilitation services*. The commencing date for authorization of training and rehabilitation services is the same as the effective date for awards for subsistence allowance under provisions of § 21.322, except when:

(1) The commencing date for authorization of a program of employment services is determined under provisions of § 21.326;

(2) An earlier commencement date is established in the veteran's plan or the veteran is entitled to earlier induction under § 21.282;

(3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30.

(Authority: 38 U.S.C. 3108 (a) and (f))

(c) *Ending date of subsistence allowance*. The ending date of an award for subsistence allowance will be the earliest of the following dates:

(1) The ending date provided in the veteran's IWRP or other plan;

(2) The ending date of a period of enrollment as certified by a training or rehabilitation facility;

(3) The ending date specified in § 21.324.

(Authority: 38 U.S.C. 3108)

(d) *Ending date for training and rehabilitation services*. The ending date of training and rehabilitation services will be the same as the termination date for subsistence allowance under paragraph (c) of this section, except when:

(1) The ending date for a period of employment services is determined under provisions of § 21.326;

(2) A later termination date is established in the veteran's plan;

(3) A veteran has elected payment at the educational assistance rate paid under Chapter 30. The ending date of the award is determined under regulations applicable to termination of training under Chapter 30.

(Authority: 38 U.S.C. 3108 (a) and (f))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

### § 21.322 Commencing dates of subsistence allowance.

(a) *General*. VA will determine the commencing date of an award or increased award of subsistence allowance under this section. VA will not authorize subsistence allowance for any period prior to the earliest date for which disability compensation is payable or would be payable but for the veteran's receipt of retired pay.

(Authority: 38 U.S.C. 3108, 3113)

(b) *Entrance or reentrance into vocational rehabilitation, extended evaluation, independent living services*. Except in the case of retroactive induction into a rehabilitation program, as provided in § 21.282, the commencing date of an award of subsistence allowance shall be the earlier of:

(1) The date the facility requires the veteran to report for prescribed activities; or

(2) The date training or rehabilitation services begin.

(c) *Increases for dependents*—(1) *Dependency exists at the time of entrance or reentrance into a rehabilitation program*. A veteran may have one or more dependents on or before the date he or she enters or reenters a rehabilitation program. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if:

(A) VA receives the claim for the increase within one year of the date of entrance or reentrance; and

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period of submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) The effective date of the increase will be the date VA receives notice of the dependents existence if:

(A) VA receives the claim for the increase more than one year after the date of entrance or reentrance; and

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part;

(iii) The effective date of the increase will be the date VA receives all necessary evidence if that evidence is received more than one year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(2) *Dependency arises after entrance or reentrance into a rehabilitation program.* If the veteran acquires a dependent after he or she enters or reenters a rehabilitation program, the increase will be effective on the latest of the following dates:

(i) *Date of claim.* This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within one year from the date of the event;

(B) Date notice is received of the dependents's existence if evidence is received within 1 year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(C) Date VA receives evidence of the dependent's existence if this date is more than one year after VA requested this evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of the time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) *Date dependency arises*—(3) *Increased award not permitted.* No increased award for dependency may be paid prior to the date the law permits benefits for dependents generally.

(Authority: 38 U.S.C. 3108(b))

(d) *Correction of military records.* In accordance with the facts found, but not earlier than the date the change, correction, or modification was made by the service department, if eligibility of a veteran arises as the result of correction or modification of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other competent military authority.

(e) *Bar to benefits removed by VA.* In accordance with the facts found, but not earlier than the date the change was made by VA, if eligibility of a veteran arises as the result of review of the evidence of record regarding the character of discharge by VA, when the veteran's discharge or dismissal was a bar to benefits under 38 U.S.C. 5301.

(Authority: 38 U.S.C. 3103(b))

(f) *Incarcerated veterans.* (1) Date of release from Federal, State, or local penal institution of a veteran incarcerated for conviction of a felony.

(2) Earlier of the following dates in the case of a veteran residing in a half-way house or participating in a work-release program as a result of a felony conviction.

(i) Date of release from the half-way house or work-release program, or

(ii) Date a veteran becomes obligated to pay part of his or her living expenses.

(Authority: 38 U.S.C. 3108(g))

(g) *Temporary 100 percent award terminated.* Date of reduction of a temporary award of disability compensation at the 100 percent rate because of hospitalization.

(Authority: 38 U.S.C. 3108(h))

(h) *Liberalizing laws and VA issues.* In accordance with facts found, but not

earlier than the date of the act or administrative issue.

(Authority: 38 U.S.C. 5113)

CROSS REFERENCE. See § 21.260(c) for definition of dependents.

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22808, June 23, 1986; 52 FR 42113, Nov. 3, 1987; 55 FR 12821, Apr. 6, 1990]

**§ 21.324 Reduction or termination dates of subsistence allowance.**

(a) *General*. The effective date of the reduction of the amount paid or termination of payment of subsistance allowance will be the earliest of the dates specified in this section. If an award is reduced, the reduced rate will be effective the day following the date of termination of the greater benefit.

(b) *Death of a veteran*. Date of death, if death occurs while the veteran is in attendance or authorized leave status; otherwise date of last attendance.

(c) *Death of a dependent*. (1) Before October 1, 1982. Last day of the calendar year in which death occurs, unless the veteran's program is terminated earlier under other provisions.

(Authority: 38 U.S.C. 5113)

(2) *After September 30, 1982*. Last day of the month in which death occurs unless discontinuance is required at an earlier date under other provisions.

(Authority: 38 U.S.C. 5112(b), 5113)

(d) *Divorce*—(1) *Before October 1, 1982*. Last day of the calendar year in which divorce occurs, unless the veteran's program is terminated earlier under other provisions.

(Authority: 38 U.S.C. 5113)

(2) *After September 30, 1982*. Last day of the month in which divorce occurs unless discontinuance is required at an earlier date under other provisions.

(Authority: 38 U.S.C. 5112(b), 5113)

(e) *Child*—(1) *Marriage*—(i) *Before October 1, 1982*. Last day of the month in which the marriage occurs, unless the veteran's program is terminated earlier under other provisions.

(Authority: 38 U.S.C. 5113)

(ii) *After September 30, 1982*. Last day of the month in which the marriage occurs, unless discontinuance is required at an earlier date under other provisions.

(Authority: 38 U.S.C. 5112(b), 5113)

(2) *Age 18*. Day preceding the child's 18th birthday.

(3) *School attendance*.

(i) Last day of the month in which the child ceases attending school; or

(ii) The day preceding the child's 23rd birthday, whichever is earlier.

(4) *Helplessness*. Last day of the month in which 60 days has passed from VA's notice to the payee that the child's helplessness has ceased.

(f) *Interrupted, rehabilitation to the point of employability, independent living program completed, and extended evaluation completed status*. Last day of attendance, or approved leave status, whichever is applicable.

(Authority: 38 U.S.C. 5113)

(g) *Discontinued*. Last day of attendance or approved leave status, whichever is applicable, except as follows:

(1) If VA places the veteran in ''discontinued'' status following the veteran's withdrawal from all courses with nonpunitive grades or following his or her completion of all courses with nonpunitive grades and the case manager does not find mitigating circumstances, VA will terminate subsistence allowance effective:

(i) The first date of the term, or

(ii) December 1, 1976, whichever is later.

(2) If VA places the veteran in ''discontinued'' status following a term in which the grades the veteran receives include both those that count in the grade point average and nonpunitive grades, and the case manager does not find mitigating circumstances:

(i) VA will terminate subsistence allowance for courses in which the veteran receives nonpunitive grades effective the first day of the term or December 1, 1976, whichever is later.

(ii) VA will terminate subsistence allowance for courses in which the veteran receives grades that will count in the grade point average effective the

veteran's last day of attendance or approved leave status, whichever is applicable.

(Authority: 38 U.S.C. 3680(a))

(h) *Wages or salary received in apprentice or on-job training.* (1) If the sum of the training wage plus the scheduled subsistence allowance is more than the journeyman wage when the training commences, the subsistence allowance will be decreased by VA effective the first day of the second month following the month in which the veteran enters on-job training.

(2) Subsequent adjustments will be effective the first day of the second month following the month in which wages or salary changes are made which justify the adjustment under provisions of § 21.266(e).

(Authority: 38 U.S.C. 3108)

(i) *Reduction in rate of pursuit of the program.* End of month in which reduction occurs, except that if the rate of pursuit is reduced as a result of the veteran's withdrawal from a unit course or courses with nonpunitive grade(s) or as a result of the veteran's completion of a unit course or courses with nonpunitive grade(s) (§ 21.4200(j)), VA will reduce subsistence allowance as follows:

(1) If it is determined that there are mitigating circumstances:

(i) Withdrawal with nonpunitive grades: The end of the month or the end of the term in which the veteran withdraws, whichever is earlier; if the reduction occurs at the beginning of the term benefits will be reduced the first day of the term in which the veteran withdraws.

(ii) Completion with nonpunitive grades. No reduction required.

(2) If it is determined there are no mitigating circumstances VA will reduce the veteran's subsistence allowance effective the first day of the term in which the veteran withdraws or which the veteran completes with nonpunitive grades. The term *mitigating circumstances* means circumstances beyond the veteran's or serviceperson's control which prevent him or her from continuously pursuing a rehabilitation program. The following circumstances are representative of those which are considered mitigating.

(i) An illness of the program participant;

(ii) An illness or death in the program participant's family;

(iii) An unavoidable change in the veteran's conditions of employment;

(iv) An unavoidable geographical transfer resulting from the veteran's employment;

(v) Immediate family or financial obligations beyond the control of the veteran which are found by VA to require the veteran to suspend pursuit of the rehabilitation program;

(vi) Discontinuance of the course by the educational institution;

(vii) In the first instance of withdrawal on or after June 1, 1989 by a program participant from a course or courses with respect to which such veteran has been paid subsistence allowance under the provisions of § 21.260(b), mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof;

(viii) Difficulties in obtaining child care or changes in such arrangements which are beyond the control of the program participant and which require interruption of the rehabilitation program is order for the participant to provide or arrange for such care.

(Authority: 38 U.S.C. 3680(a))

(j) *Severance of service-connection.* Last day of the month in which the severance becomes final.

(Authority: 38 U.S.C. 5113)

(k) *Fraud.* The later of the following dates:

(1) The beginning date of the award of subsistence allowance, or

(2) The day preceding the date of the fraudulent act.

(Authority: 38 U.S.C. 6103(a))

(l) *Error*—(1) *Payee error.* Effective date of the award of subsistence allowance or day preceding the act, whichever is later, but not prior to the date the veteran's entitlement ceases, on an erroneous award based on an act of commission or omission by a payee with his or her knowledge.

(2) *Administrative error*. Except as provided in paragraph (j) of this section, date of last payment on an erroneous award based solely on administrative error or an error in judgment by a VA employee.

(m) *Treasonable acts, subversive activities*. The later of the following dates:

(1) Beginning date of the award of subsistence allowance, or

(2) Day preceding the date of commission of the treasonable act or subversive activities for which the veteran is convicted.

(Authority: 38 U.S.C. 5113)

(n) *Incarceration in prison or jail*—(1) *Felony conviction*. If a veteran's subsistence allowance must be reduced because of incarceration for a felony conviction under provisions of § 21.276, his or her rate of payment will be reduced the later of:

(i) The date of his or her incarceration in a prison or jail; or

(ii) The commencing date of his or her award as determined by § 21.322.

(2) *Halfway house or work-release program*. The subsistence allowance of a veteran in a halfway house or work release program as a result of conviction of a felony will not be reduced under the provisions of § 21.276 the date on which the Federal Government or a State or local government pays all of the veteran's living expenses.

(Authority: 38 U.S.C. 3108(g))

(o) *Specialized rehabilitation facility*. Date payment for room and board by VA begins, reduce the rate paid to the amount payable for dependents.

(Authority: 38 U.S.C. 3108(i))

(p) *Termination of subsistence allowance while hospitalized at VA expense*. Date before the beginning date of the increased disability compensation award, which results in a reduced subsistence allowance under the provisions of § 21.266.

(Authority: 38 U.S.C. 3108(h))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22808, June 23, 1986; 51 FR 25525, July 15, 1986; 55 FR 48843, Nov. 23, 1990]

### § 21.326 Authorization of employment services.

(a) *General*. Authorization of employment services shall be based upon the services identified and goals established in an IEAP (Individualized Employment Assistance Plan) under provisions of § 21.88. The effective dates for the commencement, or termination of such services will be determined under this section.

(Authority: 38 U.S.C. 3117(a))

(b) *Commencing date*. The commencing date authorizing a period of employment services will be the later of:

(1) The date following completion of the period of rehabilitation to the point of employability; or

(2) The date of the original IEAP.

(Authority: 38 U.S.C. 3107, 3117(a))

(c) *Termination of the authorization of employment services*. Authorization for employment services will be terminated the earliest of:

(1) The last day employment services are provided under the terms of an IEAP when employment services are interrupted, discontinued, or the veteran is rehabilitated;

(2) The date the authorization is found to be erroneous because of an act of omission or commission by the veteran, or with his or her knowledge;

(3) The last day of the month in which severance of service connection becomes final;

(4) The day proceding the date of a fraudulent act;

(5) The date preceding the commission of a treasonable or subversive act for which the veteran is convicted.

(Authority: 38 U.S.C. 3108, 5113)

### § 21.328 Two veteran cases—dependents.

If both partners in a marriage are veterans, and if each is receiving either subsistence allowance for a vocational rehabilitation program or an educational assistance allowance under another VA program, each is entitled to receive the additional allowances

payable for each other and for their children.

(Authority: 38 U.S.C. 3108(a))

**§ 21.330 Apportionment.**

(a) *General.* Where in order, VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of this title. If the veteran is in receipt of benefits at the Chapter 30 rate, VA will not apportion these benefits.

(Authority: 38 U.S.C. 5307(c))

(b) *Effective date.* The effective date of apportionment will be as prescribed in § 3.400(e) of this title.

(Authority: 38 U.S.C. 5307(c))

(c) *Child adopted out of family.* Where evidence establishes that a veteran is the natural parent of a child or children legally adopted outside of the veteran's family, VA will apportion in favor of the child or children only that additional amount of subsistence allowance payable on account of the existence of the child or children. The veteran is not entitled in his or her own right to the additional amount of subsistence allowance payable for the child because of the existence of the child unless the veteran is contributing to the child's support.

(Authority: 38 U.S.C. 5307(c))

(d) *Veteran convicted of a felony.* The subsistence allowance of a veteran in a rehabilitation program after October 17, 1980, may not be apportioned if the veteran is incarcerated because of conviction for a felony.

(Authority: 38 U.S.C. 3108(g))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

**§ 21.332 Payments of subsistence allowance.**

(a) *Eligibility.* At the end of the month, VA shall pay to an eligible veteran enrolled in a rehabilitation program, subsistence allowance at the rates specified in § 21.260 for the type of program pursued during the month, unless advance payment is approved. VA will continue payments during those intervals described in § 21.270.

(Authority: 38 U.S.C. 3108)

(b) *Advance payment criteria.* VA will make an advance payment of subsistence allowance only when:

(1) The veteran specifically requests an advance payment; and

(2) The educational institution at which the veteran is accepted or enrolled has agreed to, and can carry out, satisfactorily, the provisions of 38 U.S.C. 3680(d) (4) and (5) pertaining to:

(i) Receipt, delivery or return of advance checks; and

(ii) Certifications of delivery and enrollment.

(c) *Advance payment.* (1) The amount of advance payment is not to exceed:

(i) The veteran's subsistence allowance for the month or part of a month in which his or her course will begin; plus

(ii) The veteran's subsistence allowance for the following month.

(2) Upon application and completion of arrangements for enrollment of a veteran who meets the criteria for an advance payment, VA shall mail a check payable to the veteran to the institution for delivery to the veteran upon registration.

(3) An institution shall not deliver an advance payment check to a veteran more than 30 days in advance of commencement of his or her program.

(d) *Certification for advance payment.* VA will authorize advance payment upon receipt of the institution's certification of the following information:

(1) The veteran is eligible for benefits;

(2) The institution has accepted the veteran or he or she is eligible to continue his or her training;

(3) The veteran has notified the institution of his or her intention to attend or to reenroll;

(4) The number of semester or clock hours the veteran will pursue; and

(5) The beginning and ending dates of the enrollment period.

(e) *Time of advance payment.* VA will authorize advance payment only:

(1) At the beginning of an ordinary school year; or

(2) At the beginning of any other enrollment period which begins after a

break in enrollment of one full calendar month or longer.

(Authority: 38 U.S.C. 3680(d))

(f) *Other payments.* (1) VA will make all payments other than advance payments at the end of the month for the veteran's training during that month.

(2) VA may withhold final payment until:

(i) VA receives certification that the veteran has completed his or her course; and

(ii) VA makes all necessary adjustments in the veteran's award resulting from that certification.

(Authority: 38 U.S.C. 3680(g))

(g) *Payments for courses which are repeated.* VA may pay subsistence allowance to a veteran who repeats a course under conditions described in § 21.132.

(Authority: 38 U.S.C. 3680(a))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

**§ 21.334 Election of payment at the Chapter 30 rate.**

(a) *Election.* When the veteran elects payment of an allowance at the chapter 30 rate, the effective dates for commencement, reduction and termination of the allowance shall be in accordance with §§ 21.7130 through 21.7135 and 21.7050 under chapter 30.

(Authority: 38 U.S.C. 1808(f), 1780)

(b) *Election of payment at the Chapter 30 rate subsequent to induction into a rehabilitation program.* Election of payment at the Chapter 30 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:

(1) The commencing date determined under § 21.7131 in the case of a veteran who has elected payment at the chapter 30 rate; or

(2) The day following the end of the period for which VA paid tuition, fees or other program charges under this Chapter.

(Authority: 38 U.S.C. 3108(f))

(c) *Reelection of subsistence allowance subsequent to induction.* If a veteran reelects subsistence allowance under provisions of § 21.264(b) of this part, the effective date of change is earliest of the following:

(1) The date following completion of the term, semester, quarter, or other period of instruction in which the veteran is currently enrolled;

(2) The veteran's Chapter 30 delimiting date;

(3) The day after exhaustion of Chapter 30 entitlement; or

(4) The day following the date of a VA determination that failure to approve reelection would prevent the veteran from continuing the rehabilitation program.

(Authority: 38 U.S.C. 3108(f))

(d) *Election or reelection during leave or between periods of instruction*—(1) *Payment at the Chapter 30 rate.* If an otherwise eligible veteran elects payment at the Chapter 30 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.

(2) *Subsistence allowance.* If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.

(Authority: 38 U.S.C. 3108(f))

(e) *Effect of Chapter 34 program termination.* (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;

(2) A veteran entitled to chapter 30 benefits based on his or her chapter 34 eligibility as of December 31, 1989, and whose election of chapter 34 rates terminated as of the date under paragraph (e)(1) of this section must, if the individual desires payment at the chapter 30 rate, elect such payment.

(Authority: 38 U.S.C. 1411(a))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989, 54 FR 13522, Apr. 4, 1989; 57 FR 57108, Dec. 3, 1992]

LEAVES OF ABSENCE

### § 21.340 Introduction.

(a) *General*. VA may approve leaves of absence under certain conditions. During approved leaves of absence, a veteran in receipt of subsistence allowance shall be considered to be pursuing a rehabilitation program. Leave may be authorized for a veteran during a period of:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living services.

(b) *Election of subsistence allowance*. If a veteran elects to receive subsistence allowance and payment of rehabilitation services by VA, he or she may be authorized leave of absence under §§ 21.342 through 21.350.

(c) *Election of benefits at the chapter 30 rate*. If a veteran elects to receive a subsistence allowance paid at the chapter 30 rate, the effect of absences is determined under §§ 21.7139 and 21.7154.

(Authority: 38 U.S.C. 1508(f) and 1510)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4285, Jan. 30, 1989; 57 FR 57109, Dec. 3, 1992]

### § 21.342 Leave accounting policy.

(a) *Amount of leave*. A veteran pursuing one of the programs listed in § 21.340(a) may be authorized up to 30 days of leave by the case manager during a twelve-month period. The beginning date of the first twelve-month period is the commencing date of the original award, and the ending date is twelve months from the beginning date, with subsequent twelve-month periods running consecutively thereafter.

(b) *Additional leave under exceptional circumstances*. A veteran in a program may be authorized up to 15 additional days of leave during the twelve-month period by the case manager under exceptional circumstances, such as extended illness or family problems.

(c) *Absence*. For the purpose of determining when a leave of absence may be authorized, a veteran who elects subsistence allowance shall be considered absent during any period in which he or she is:

(1) Not in attendance under the rules and regulations of the educational institution, rehabilitation center, or sheltered workshop;

(2) Not considered at work under the rules of the training establishment; or

(3) Not present at a scheduled period of individual instruction.

(d) *System of records*. An educational institution, training establishment, rehabilitation center, or other facility or individual providing training and rehabilitation services under Chapter 31 may utilize the same system of records to determine absence as the one used for similarly circumstanced nonveterans.

(e) *Change in rate of pursuit*. The amount of approved leave is not affected by the veteran's rate of pursuit of a rehabilitation program.

(f) *Charging leave*. VA shall charge 1 day of leave for each day or part of a day of absence from pursuit of a rehabilitation program.

(g) *Limitation on carrying leave over to another period*. The veteran may not carry over unused days of leave from one twelve-month period to another.

(Authority: 38 U.S.C. 3110)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 56 FR 14649, Apr. 11, 1991]

### § 21.344 Facility offering training or rehabilitation services.

(a) *Approval of leaves of absence required*. Leaves of absence normally must be approved in advance by the case manager when the facility offering training or rehabilitation services arranges for the leave. The approval of the case manager is required:

(1) During periods in a rehabilitation program identified in § 21.342(c); or

(2) A period of hospitalization at VA expense during one of the periods identified in § 21.342(c).

(b) *Responsibility of the veteran in obtaining leave*. VA will not authorize leave without a verbal or written request by the veteran, and the approval of the facility.

(c) *Conditions permitting approval of leaves of absence*. (1) The case manager may approve leaves of absence up to a total of 30 days during a twelve-month period if the facility certifies that the use of the leave does not interfere materially with the veteran's progress;

(2) An additional period of up to 15 days of leave in the same twelve-month

period under exceptional circumstances may be approved by the case manager if failure to approve leave will:

(i) Result in personal hardship, or

(ii) Adversely affect the veteran's ability to continue in his or her rehabilitation program.

(Authority: 38 U.S.C. 3110)

[49 FR 40814, Oct. 18, 1984, as amended by 56 FR 14649, Apr. 11, 1991]

### § 21.346 Facility temporarily not offering training or rehabilitation services.

(a) *Approval of leave of absence not required.* A veteran may receive subsistence allowance, during a period when the facility temporarily is not offering services, without the veteran's being charged with leave when:

(1) The facility is closed temporarily under an executive order of the President or due to an emergency situation;

(2) The veteran is pursuing on-job training and he or she receives holidays established by Federal or State law;

(3) The veteran is pursuing farm cooperative training and is required in the ordinary day to day conduct of farm business to be absent:

(i) From the farm; or

(ii) From that part of a farm cooperative course which is given at the educational institution.

(4) The veteran is pursuing a standard college degree; and

(i) There is an interval between consecutive semesters, terms, quarters or periods of instruction *within a certified enrollment period* which does not exceed a full calendar month;

(ii) There is an interval, which does not exceed a full calendar month between semesters, terms or quarters when the educational institution only certifies enrollment on a semester, term, or quarter basis; or

(iii) There is an interval, which does not exceed 30 days, when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in and pursuing a similar program at the second institution;

(5) The veteran is pursuing a non-college-degree course and there is a period of up to 5 days per twelve-month period during which the school offering non-college-degree courses is not operating, because instructors are attending professional meetings.

(b) *Case manager responsibility.* The case manager may disapprove leave under paragraph (a)(4) of this section if:

(1) Approval would result in or lead to use of more than 48 months of entitlement under Chapter 31, alone; or

(2) Approval would require extension of the scheduled completion date of the veteran's program.

(c) *Approval of leaves of absence required.* A veteran, who wishes to receive subsistence allowance while the facility temporarily is not offering training under conditions other than those identified in paragraph (a) of this section, must seek an approved leave of absence and be charged leave.

(Authority: 38 U.S.C. 3110)

### § 21.348 Leave following completion of a period of training or rehabilitation services.

(a) *Leave following completion of training or rehabilitation services.* Leave may not be approved following completion of a period of rehabilitation services described in § 21.340(a).

(b) *Postponement of the date of completion of a period of rehabilitation services prohibited.* The date of completion of the veteran's program may not be extended for the purpose of allowing the veteran to use leave.

(Authority: 38 U.S.C. 3110)

### § 21.350 Unauthorized absences.

A veteran who is unable to obtain an authorized leave of absence in advance may seek to have the unauthorized absence excused.

(a) *Excusing unauthorized absences.* VA may excuse an unauthorized absence and make proper charges against the veteran's leave when:

(1) The veteran has absented himself or herself when advance approval from VA is impracticable; and

(2) Conditions for approval of leave are otherwise met.

(b) *Unexcused, unauthorized absences.* When an unauthorized absence is not satisfactorily explained, VA will take

necessary action, including recoupment of subsistence allowance for that period of absence.

(Authority: 38 U.S.C. 3110)

CONDUCT AND COOPERATION

**§ 21.362 Satisfactory conduct and cooperation.**

(a) *General.* The successful development and implementation of a program of rehabilitation services require the full and effective participation of the veteran in the rehabilitation process.

(1) The veteran is responsible for satisfactory conduct and cooperation in developing and implementing a program of rehabilitation services under Chapter 31;

(2) The staff is responsible for insuring satisfactory conduct and cooperation on the veteran's part; and

(3) VA staff shall take required action when the veteran's conduct and cooperation are not satisfactory. (See § 21.364)

(b) *VA responsibility.* VA shall make a reasonable effort to inform the veteran and assure his or her understanding of:

(1) The services and assistance which may be provided under Chapter 31 to help the veteran maintain satisfactory cooperation and conduct and to cope with problems directly related to the rehabilitation process, especially counseling services;

(2) Other services which VR&E staff can assist the veteran in securing through non-VA programs; and

(3) The specific responsibilities of the veteran in the process of developing and implementing a program of rehabilitation services, especially the specific responsibility for satisfactory conduct and cooperation.

(c) *Veteran's responsibility.* A veteran requesting or being provided services under Chapter 31 must:

(1) Cooperate with VA staff in carrying out the initial evaluation and developing a rehabilitation plan;

(2) Arrange a schedule which allows him or her to devote the time needed to attain the goals of the rehabilitation plan;

(3) Seek the assistance of VA staff, as necessary, to resolve problems which affect attainment of the goals of the rehabilitation plan;

(4) Conform to procedures established by VA governing pursuit of a rehabilitation plan including:

(i) Enrollment and reenrollment in a course;

(ii) Changing the rate at which a course is pursued;

(iii) Requesting a leave of absence;

(iv) Requesting medical care and treatment;

(v) Securing supplies; and

(vi) Other applicable procedures.

(5) Conform to the rules and regulations of the training or rehabilitation facility at which services are being provided.

(d) *Responsibility for determining satisfactory conduct and cooperation.* VR&E staff with case management responsibility in the veteran's case will:

(1) Monitor the veteran's conduct and cooperation as necessary to assure consistency with provisions of paragraph (c) of this section.

(2) Provide assistance which may be authorized under Chapter 31, or for which arrangements may be made under other programs to enable the veteran to maintain satisfactory conduct and cooperation.

(Authority: 38 U.S.C. 3111)

**§ 21.364 Unsatisfactory conduct and cooperation.**

(a) *General.* If VA determines that a veteran has failed to maintain satisfactory conduct or cooperation, VA may, after determining that all reasonable counseling efforts have been made and are found not reasonably likely to be effective, discontinue services and assistance to the veteran, unless the case manager determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, VA may reinstitute such services and assistance only if the counseling psychologist determines that:

(1) The unsatisfactory conduct or cooperation of such veteran will not be likely to recur; and

(2) The rehabilitation program which the veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

(b) *Unsatisfactory conduct or cooperation exists*. When the case manager determines that the veteran's conduct and/or cooperation are not in conformity with provisions of § 21.362(c), the case manager will:

(1) Discuss the situation with the veteran;

(2) Arrange for services, particularly counseling services, which may assist in resolving the problems which led to the veteran's unsatisfactory conduct or cooperation;

(3) Interrupt the program to allow for more intense efforts, if the unsatisfactory conduct and cooperation persist. If a reasonable effort to remedy the situation is unsuccessful during the period in which the program is interrupted, the veteran's case will be discontinued and assigned to ''discontinued'' status unless mitigating circumstances are found. When mitigating circumstances exist the case may be continued in ''interrupted'' status until VA staff determines the veteran may be reentered into the same or a different program because the veteran's conduct and cooperation will be satisfactory, or if a plan has been developed, to enable the veteran to reenter and try to maintain satisfactory conduct and cooperation. Mitigating circumstances include:

(i) The effects of the veteran's service and nonservice-connected condition;

(ii) Family or financial problems which have led the veteran to unsatisfactory conduct or cooperation; or

(iii) Other circumstances beyond the veteran's control.

(Authority: 38 U.S.C. 3111)

INTERREGIONAL AND INTRAREGIONAL TRAVEL OF VETERANS

### § 21.370 Intraregional travel at government expense.

(a) *Introduction*. VA may authorize transportation expenses for intraregional travel to a veteran in a rehabilitation program or a program of employment services for the purposes presented in paragraph (b) of this section. When approved for purposes stated in paragraph (b) of this section, authorization of travel is limited to the veteran's transportation, and does not include transportation for the veteran's dependents, or for moving personal effects.

(Authority: 38 U.S.C. 111, 3104(a)(13))

(b) *Necessary condition for intraregional travel at government expense*. VA may authorize a veteran to travel at government expense within the regional territory of the VA field station of jurisdiction when:

(1) VA determines that the travel is necessary in the discharge of the government's obligation to the veteran; and

(2) The veteran is instructed to travel for any of the following reasons:

(i) To report to the chosen school or training facility for the purpose of starting training;

(ii) To report to a prospective employer-trainer for an interview prior to induction into training, when there is definite assurance in advance of approving the travel that, upon interview, the employer will start the veteran in training, if the employer finds the veteran acceptable, or

(iii) To report to the chosen school for a personal interview prior to induction into training when:

(A) The school requires the interview as a condition of admission,

(B) There is assurance before the travel is approved that the veteran's records (school, counseling, etc.) show he or she meets all basic requirements for induction under § 21.282; and

(C) The veteran submits to the school a transcript of his or her high school credits and a transcript from any school he or she attended following high school.

(iv) To report to a rehabilitation facility or sheltered workshop;

(v) To return to his or her home from the training or rehabilitation facility when:

(A) Services are not available for a period of 30 days or more (including summer vacation periods), and

(B) Travel from his or her home to the training or rehabilitation facility was at government expense;

(vi) To return to the training or rehabilitation facility from his or her home, when:

(A) The purpose of the travel is to continue the rehabilitation program, and

(B) Travel from the training or rehabilitation facility to the veteran's home was at government expense;

(vii) To return to the point from which he or she was transported at government expense, upon being placed in ''discontinued'' or ''interrupted'' status for any reason, except abandonment of training by the veteran without good reason;

(viii) To report to a place of prearranged satisfactory employment upon completion of vocational rehabilitation for the purpose of beginning work;

(ix) To return to his or her home from the place of training following rehabilitation to the point of employability, when suitable employment is not available;

(x) To return from the place of training to the veteran's prior location, when VA could have approved travel to the place of training at government expense, but did not issue the necessary travel authorization; and

(xi) To report to a place to take a scheduled examination required to practice the trade or profession for which the veteran has been trained. This travel shall be limited to points within the state in which the veteran has pursued his or her training or, if the veteran returned to the state from which he or she was sent to pursue training, he or she may be sent at government expense to a place within that state to take the examination. If there is more than one place within the state at which the veteran may take the examination, travel shall be limited to the nearest place.

(Authority: 38 U.S.C. 111)

(c) *Approval of intraregional transfer.* Intraregional travel must be approved by the case manager.

(Authority: 38 U.S.C. 3104(a)(13))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.372 Interregional transfer at government expense.

(a) *Introduction.* A veteran may need to transfer from the jurisdiction of one VA facility to another in order to accomplish rehabilitation. This section states the conditions which will permit the transfer to be made at government expense. Authorization of travel is limited to the veteran's transportation, and does not include transportation for the veteran's dependents or for moving personal effects.

(Authority: 38 U.S.C. 111, 3104(a)(13))

(b) *Conditions which permit interregional transfers at government expense.* A veteran may be provided travel at government expense when it has been determined that such travel is necessary to accomplish rehabilitation. VA will authorize an interregional transfer at government expense only to allow the veteran:

(1) To enter training in the nearest satisfactory facility if:

(i) The nearest satisfactory facility is within the jurisdiction of another VA facility; or

(ii) There are no satisfactory facilities within the jurisdiction of the facility in which the veteran resides.

(2) To enter training in the state in which the veteran has long-standing family and social ties, and in which he or she plans to live following rehabilitation;

(3) To report to an employer-trainer when all necessary steps have been taken to establish an on-job training program;

(4) To report to rehabilitation facility or sheltered workshop;

(5) To return to his or her home from the place of training when:

(i) Training is not available for a period of 30 days or more (including summer vacation periods), and

(ii) Travel from his or her home to the place of training or rehabilitation services was at government expense;

(6) To return to the place of training or rehabilitation services from his or her home, when;

(i) The purpose of the travel is to continue training or rehabilitation services; and

(ii) Travel from the place of training or rehabilitation services to the veteran's home was at government expense;

(7) To return to the point from which he or she was transferred at government expense, upon being assigned to

''discontinued'' or ''interrupted'' status, for any reason, except abandonment of training by the veteran without good reason;

(8) To report to a place of prearranged satisfactory employment or for a prearranged employment interview following completion of his or her program of vocational rehabilitation, when:

(i) There is no satisfactory opportunity for employment in the veteran's occupation within the jurisdiction of the facility which has jurisdiction over his or her residence, and

(ii) The veteran has a serious employment handicap.

(9) To return to his or her home, from which he or she was transferred at government expense to pursue training, when, upon completion of his or her course, satisfactory employment is not available;

(10) To return to the location from which he or she traveled without authorization because VA did not issue the necessary travel authorization on a timely basis.

(Authority: 38 U.S.C. 111)

(c) *Approval of interregional transfer*. Interregional travel must be approved by the case manager.

(Authority: 38 U.S.C. 3104(a)(13))

### § 21.374 Authorization for travel of attendants.

(a) *Travel for attendants*. The services of an attendant to accompany a veteran while traveling for rehabilitation purposes may be provided when such services are necessitated by the severity of the veteran's disability. Attendants may only be used to enable a veteran to attend appointments for initial evaluation, counseling, or intraregional or interregional travel at government expense under § 21.370 and § 21.372.

(Authority: 38 U.S.C. 111)

(b) *Attendants not employed by the Federal government*. (1) VA may authorize persons not in regular civilian employment of the Federal government to act as attendants. Payment of travel expenses for attendants will be authorized on the same basis as for the veteran the attendant is accompanying. VA:

(i) Will furnish the attendant with common-carrier transportation, meal and lodging expenses; or

(ii) Will grant the attendant a mileage allowance in lieu of furnishing the assistance cited in paragraph (b)(1)(i) of this section.

(2) VA will not pay the attendant a fee if he or she is a relative of the veteran. A relative, for this purpose, is a person who by blood or marriage is the veteran's

(i) Spouse,
(ii) Parent,
(iii) Child,
(iv) Brother,
(v) Sister,
(vi) Uncle,
(vii) Aunt,
(viii) Niece, or
(ix) Nephew.

(c) *Attendant employed by the Federal government*. (1) VA may authorize a person in the regular civilian employment of the Federal government to act as an attendant. When assigned, the attendant:

(i) Will be entitled to transportation and expenses, or

(ii) May be allowed per diem in place of subsistence in accordance with the provisions of the Federal Travel Regulations (5 U.S.C. Chapter 57).

(2) VA will pay no fee to civilian employees of the Federal government who act as attendants.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

### § 21.376 Travel expenses for initial evaluation and counseling.

When VA asks a disabled veteran to report to a designated place for an initial evaluation, reevaluation or counseling (including personal or vocational adjustment counseling), the veteran will travel to and from the place of evaluation and counseling at government expense. When a veteran, because of a severe disability, requires the services of an attendant while traveling, VA will authorize payment of travel expenses for the attendant under the provisions of § 21.374.

(Authority: 38 U.S.C. 111)

PERSONNEL TRAINING AND DEVELOPMENT

**§ 21.380 Establishment of qualifications for personnel providing assistance under Chapter 31.**

(a) *General.* Notwithstanding any other provision of law or regulation, VA shall establish qualification standards for VBA personnel providing evaluation, rehabilitation, and case management services to eligible veterans under chapter 31, including:

(1) Counseling psychologists;

(2) Vocational rehabilitation specialists; and

(3) Other staff providing professional and technical assistance.

(b) *Rehabilitation Act of 1973.* VA shall consider qualification standards established for comparable personnel under the Rehabilitation Act of 1973, when setting agency standards.

(Authority: 38 U.S.C. 3118(c))

**§ 21.382 Training and staff development for personnel providing assistance under Chapter 31.**

(a) *General.* VA shall provide a program of ongoing professional training and development for staff of the VR&E Service engaged in providing rehabilitation services under chapter 31. The objective of such training shall be to insure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of disabled persons. The areas in which training and development services may be provided to enhance staff skills include:

(1) Evaluation and assessment:

(2) Medical aspects of disability;

(3) Psychological aspects of disability;

(4) Counseling theory and techniques;

(5) Personal and vocational adjustment;

(6) Occupational information;

(7) Placement processes and job development;

(8) Special considerations in rehabilitation of the seriously disabled;

(9) Independent living services;

(10) Resources for training and rehabilitation; and

(11) Utilizing research findings and professional publications.

(Authority: 38 U.S.C. 3118)

(b) *Training and development resources.* For the purpose of carrying out the provisions of paragraph (a) of this section VA may:

(1) Employ the services of consultants;

(2) Make grants to and contract with public and private agencies, including institutions of higher learning, to conduct workshop and training activities;

(3) Authorize individual training at institutions of higher learning and other appropriate facilities; and

(4) Utilize chapter 41 of title 5, U.S.C., and related instructions to provide training and staff development activities on a group and individual basis.

(Authority: 38 U.S.C. 3118(b))

(c) *Interagency coordination.* VA shall coordinate with the Commissioner of the Rehabilitation Services Administration and the Assistant Secretary for Veterans' Employment in planning and carrying out personnel training in areas of mutual programmatic concern.

(Authority: 38 U.S.C. 3118(c))

REHABILITATION RESEARCH AND SPECIAL PROJECTS

**§ 21.390 Rehabilitation research and special projects.**

(a) *General.* VA shall carry out an ongoing program of activities for the purpose of advancing the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans. For this purpose, VA may conduct research and development, provide support for research and development, or both conduct and provide support for the development and conduct of:

(1) Studies and research concerning the psychological, educational, social, vocational, industrial, and economic aspects of rehabilitation; and

(2) Projects which are designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.

(Authority: 38 U.S.C. 3119(a))

(b) *Grants*. VA may make grants to, or contract with, public on nonprofit agencies, including institutions of higher learning, to carry out the provisions of paragraph (a) of this section.

(Authority: 38 U.S.C. 3119(b))

(c) *Research by Vocational Rehabilitation and Employment (VR&E) staff members*. VA will encourage research by VR&E staff members. This research will address problems affecting service delivery, initiation and continuation in rehabilitation programs, and other areas directly affecting the quality of VR&E services to veterans.

(Authority: 38 U.S.C. 3119(a))

(d) *Interagency coordination*. VA shall cooperate with the Commissioner of the Rehabilitation Services Administration and the Director of the National Institute of Handicapped Research in the Department of Education, the Assistant Secretary for Veterans' Employment in the Department of Labor, and the Secretary of Health and Human Services regarding rehabilitation studies, research, and special projects of mutual programmatic concern.

(Authority: 38 U.S.C. 3119(c))

[49 FR 40814, Oct. 18, 1984, as amended at 62 FR 17710, Apr. 11, 1997]

VETERANS' ADVISORY COMMITTEE ON REHABILITATION

**§ 21.400 Veterans' Advisory Committee on Rehabilitation.**

(a) *General*. The Secretary shall appoint an advisory committee to be known as the Veterans' Advisory Committee on Rehabilitation.

(b) *Purpose*. The purposes of the Veterans' Advisory Committee on Rehabilitation, hereafter referred to as the committee, are to:

(1) Assess the rehabilitation needs of service and nonservice-disabled veterans; and

(2) Review the programs and activities of VA designed to meet such needs;

(Authority: 38 U.S.C. 3121(c))

(c) *Members*. The committee shall include:

(1) Members of the general public;

(2) Appropriate representation of veterans with service-connected disabilities; and

(3) Persons who have distinguished themselves in the public and private sectors in the fields of rehabilitation, and employment and training programs.

(d) *Members terms*. The Secretary shall appoint members of the committee for three-year terms. Members may be reappointed for additional three-year terms.

(e) *Chairperson*. The Secretary will designate one of the members of the committee to chair the committee.

(f) *Ex-officio members*. The committee shall also include ex-officio members named by the following agencies. The ex-officio members shall include one representative from:

(1) The Veterans Health Services and Research Administration;

(2) The Veterans Benefits Administration;

(3) The Rehabilitation Services Administration and one from the National Institute for Handicapped Research of the Department of Education; and

(4) The Assistant Secretary of Labor for Veterans' Employment of the Department of Labor.

(Authority: 38 U.S.C. 3121(a))

**§ 21.402 Responsibilities of the Veterans' Advisory Committee on Rehabilitation.**

(a) *Consultation with the Secretary*. The Secretary shall regularly, but not less than twice yearly, consult with and seek the advice of the committee with respect to the administration of veterans' rehabilitation programs authorized under Title 38, United States Code.

(b) *Submission of an annual report*. The committee shall:

(1) Submit to the Secretary an annual report on the rehabilitation programs and activities of the VA; and

(2) Submit such other reports and recommendations to the Secretary as the committee determines appropriate.

(c) *Contents of the committee's annual report*. The committee's annual report shall include:

(1) An assessment of the rehabilitation needs of veterans; and

(2) A review of the programs and activities of VA designed to meet needs identified in paragraph (c)(1) of this section.

(d) *Secretary's annual report.* The findings of the committee shall be incorporated in the Secretary's annual report submitted to the Congress under 38 U.S.C. 529. In addition the Secretary shall submit, together with this annual report, a copy of all reports and recommendations of the committee submitted to the Secretary since the previous annual report was submitted to the Congress.

(Authority: 38 U.S.C. 3121(c))

ADDITIONAL ADMINISTRATIVE CONSIDERATION

**§ 21.410 Delegation of authority.**

The Secretary delegates authority to the Under Secretary for Benefits to make findings and decisions under 38 U.S.C. chapter 31 and regulations, precedents, and instructions that affect vocational rehabilitation services for disabled veterans. The Under Secretary for Benefits may further delegate this authority to supervisory and non-supervisory Vocational Rehabilitation and Employment staff members.

(Authority: 38 U.S.C. 512(a))

[62 FR 17710, Apr. 11, 1997]

**§ 21.412 Finality of decisions.**

(a) *Facility of original jurisdiction.* The decision of a VA facility in a given veteran's case:

(1) Will be final and binding upon all field stations of VA as to conclusions based on evidence on file at that time; and

(2) Will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §§ 21.410 and 21.414. (See §§ 19.153, 19.154, and 19.155.

(Authority: 38 U.S.C. 512(a), 7103)

(b) *Adjudicative determinations.* Current determinations of line of duty, character of discharge, relationship, and other pertinent elements affecting eligibility for training and rehabilitation services or payment of subsistence allowance under Chapter 31, made by an adjudicative activity by application of the same criteria and based on the same facts, are binding upon all other adjudicative activities in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 512(a))

**§ 21.414 Revision of decision.**

The revision of a decision on which an action is based is subject to the following regulations:

(a) Clear and unmistakable error, § 3.105(a);

(b) Difference of opinion, § 3.105(b);

(c) Character of discharge, § 3.105(c);

(d) Severance of service-connection, § 3.105(d);

(e) Reduction to less than compensable evaluation, § 3.105(e). (See §§ 21.48, 21.322, and 21.324)

(Authority: 38 U.S.C. 5112)

INFORMING THE VETERAN

**§ 21.420 Informing the veteran.**

(a) *General.* VA will inform a veteran in writing of findings affecting receipt of benefits and services under Chapter 31. This includes veterans:

(1) Requesting benefits and services; or

(2) In receipt of benefits and services.

(b) *Notification.* (1) Each notification should include the decision or finding, the reasons, including fact and law, for the decision, the effective date of the decision or finding; and

(2) The veteran's appeal rights, if any.

(c) *Adverse action.* An adverse action is one, other than an interim action such as a suspension of benefits pending development, which:

(1) Denies Chapter 31 benefits, when such benefits have been requested;

(2) Reduces or otherwise diminishes benefits being received by the veteran; or

(3) Terminates receipt of benefits for reasons other than scheduled interruptions which are a part of the veteran's plan.

(d) *Prior notification of adverse action.* VA shall give the veteran a period of at least 30 days to indicate his or her disagreement with an adverse action

other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in § 21.59 of this part, to:

(1) Meet informally with a representative of VA;

(2) Review the basis for VA decision, including any relevant written documents or material; and

(3) Submit to VA any material which he or she may have relevant to the decision.

(Authority: 38 U.S.C. 3102)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 40872, Oct. 4, 1989]

### § 21.422 Reduction in subsistence allowance following the loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

(i) VA has notified the veteran of the adverse action, and

(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

(i) VA is not required to send a prereduction notice as stated in paragraph (a)(1) of this section, but;

(ii) VA will send notice contemporaneous with the reduction in subsistence allowance.

(Authority: 38 U.S.C. 5112, 5113)

(b) *Pre-reduction notice.* Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:

(1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 5112, 5113)

(c) *Predetermination hearing.* (1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 5112, 5113)

(d) *Final action.* VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

(i) Evidence presented at the hearing;

(ii) Evidence contained in the claims file at the time of the hearing; and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decison, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

(Authority: 38 U.S.C. 5112, 5113)

[54 FR 40872, Oct. 4, 1989]

ACCOUNTABILITY

### § 21.430 Accountability for authorization and payment of training and rehabilitation services.

(a) *General*. VA shall maintain policies and procedures which provide accountability in the authorization and payment of program costs for training and rehabilitation services. The procedures established under this section are applicable to all program costs except subsistence allowance (or the optional allowance at Chapter 34 rates). Policies and procedures governing payment of subsistence allowance are governed by §§ 21.260 through 21.276, and §§ 21.320 through 21.334.

(b) *Determining necessary costs for training and rehabilitation services*. The estimates of program costs during a calendar year or lesser period shall be based upon the services necessary to carry out the veteran's rehabilitation plan during that period (§§ 21.80 through 21.98). The estimates will be developed by the VBA case manager. If additional approval is required, the VBA case manager shall secure such additional approval prior to authorization of services.

(c) *Vocational Rehabilitation and Employment (VR&E) Officer's review of program costs*. The VR&E Officer will review the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds $25,000. The VR&E Officer may not delegate this responsibility. The case manager will neither sign a rehabilitation plan nor authorize expenditures before the VR&E Officer approves the program costs. The services subject to this review are:

(1) Providing supplies to help establish a small business;

(2) A period of extended evaluation; or

(3) A program of independent living services.

(Authority: 38 U.S.C. 3115(b)(4))

CROSS REFERENCES: See § 21.156. Other incidental goods and services. § 21.258. Special assistance for veterans in self-employment.

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 45767, Dec. 22, 1986; 55 FR 25975, June 26, 1990; 62 FR 17710, Apr. 11, 1997]

## Subpart B—Claims and Applications for Educational Assistance

AUTHORITY: 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

EDITORIAL NOTE: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, ''these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 1666.''

CLAIMS

### § 21.1029 Definitions.

The following definitions of terms apply to this subpart and subparts C, D, F, G, H, K, L, and P, to the extent that the terms are not otherwise defined in those subparts:

(a) *Abandoned claim*. A claim is an *abandoned claim* if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant—

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and—

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

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

(b) *Date of claim.* The *date of claim* is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by §21.1033, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate.

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

(c) *Educational institution.* The term *educational institution* means:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private elementary school or secondary school;

(4) Any entity, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program;

(5) An organization or entity offering a licensing or certification test; or

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

(d) *Formal claim.* A claim is a *formal claim* when the claimant (or his or her authorized representative) files the claim with VA, and—

(1) The claim is a claim for—

(i) Educational assistance;

(ii) An increase in educational assistance; or

(iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed under this part, the claim is filed on that form.

(Authority: 38 U.S.C. 5101(a))

(e) *Informal claim.* (1) If a form (either paper or electronic) has been prescribed under this part to use in claiming the benefit sought, the term *informal claim* means—

(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or

(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (d)(1)(i) of this section that is filed in a document other than in the prescribed form.

(2) If a form (either paper or electronic) has not been prescribed to use in claiming the benefit sought, the term *informal claim* means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of

the individual to claim or to apply for VA-administered educational assistance.

(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.

(4) The act of enrolling in an approved educational institution or training establishment is not an informal claim.

(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(f) *Information*. 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.

(Authority: 38 U.S.C. 5101, 5102, 5103)

(g) *Substantially complete application*. (1) The term *substantially complete application* means, for an individual's first application for educational assistance 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;

(iv) The benefit claimed;

(v) The program of education, if applicable; and

(vi) The name of the educational institution or training establishment the claimant intends to attend, if applicable.

(2) For subsequent applications for educational assistance administered by VA, a *substantially complete application* means an application containing the information specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, except that the application may omit any information specified in paragraphs (g)(1)(ii) or (g)(1)(iii) of this section that is already of record with VA.

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

(h) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

(i) *VA*. The term *VA* means the United States Department of Veterans Affairs.

(Authority: 38 U.S.C. 301)

[64 FR 23770, May 4, 1999, as amended at 72 FR 16964, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

**§ 21.1030 Claims.**

(a) *Claim for educational assistance*. (1) The first time an individual claims educational assistance administered by VA for pursuit of a program of education, he or she must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If an individual changes his or her program of education or place of training after filing his or her first application for educational assistance, he or she must file an application requesting the change of program or place of training using a form the Secretary prescribes for that purpose.

(3) A servicemember must consult with his or her education service officer before filing an application for educational assistance, whether it is the first application or an application to request a change of program or place of training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(b) *Filing a claim for educational assistance to pay for a licensing or certification test.* To receive educational assistance to pay for a licensing or certification test, an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose and must include the information described in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(2) If the claim is the second or subsequent claim for educational assistance, the claim must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the claimant took the test;

(iv) The cost of the test;

(v) A statement authorizing release of the claimant's test information to VA, such as: ''I authorize release of my test information to VA''; and

(vi) Such other information as the Secretary may require.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(c) *Filing a claim for educational assistance to supplement tuition assistance provided under a program administered by the Secretary of a military department.* To receive *tuition assistance top-up* as defined in §21.4200(hh), an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If the claim is the second or subsequent claim for educational assistance, the claimant may submit a statement that he or she wishes to receive tuition assistance top-up.

(3) The claimant must also submit a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance-Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance-Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG–4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(4) The claimant must also provide to VA the following information, to the extent it is not contained on any form filed under paragraph (c)(1) or (c)(3) of this section:

(i) His or her name;

(ii) His or her Social Security number;

(iii) The name of the educational institution;

(iv) The name of the course or courses for which the claimant wants educational assistance;

(v) The number of the course or courses;

(vi) The number of credit hours for each course;

(vii) The beginning and ending date of each course;

(viii) The cost of the course or courses; and

(ix) If the claimant doesn't want to receive the full amount of that cost not met by the Secretary of the military department concerned, the portion that the claimant wishes to receive.

(5) If the claimant's military department uses an electronic tuition assistance application process with electronic signatures, VA will accept an electronic transmission of the approved tuition assistance application directly from the military department concerned on behalf of the claimant if—

(i) The electronic tuition assistance application indicates the servicemember's intent to claim tuition-assistance top-up; and

(ii) The information described in paragraph (c)(4) of this section is included in the electronic application.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0074, 2900–0098, 2900–0099, 2900–0154, 2900–0695, and 2900–0698)

[72 FR 16964, Apr. 5, 2007, as amended at 74 FR 14665, Mar. 31, 2009]

### § 21.1031 VA responsibilities when a claim is filed.

(a) *VA will furnish forms.* VA will furnish all necessary VA claim forms and instructions, and, if appropriate, a description of any supporting evidence required upon receipt of an informal claim.

(Authority: 38 U.S.C. 5102)

(b) *VA has a duty to notify claimants of necessary information or evidence.* (1) 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 educational assistance provided under subpart C, D, G, H, K, L, or P of this part VA will—

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

(ii) 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.

(2) The information and evidence that VA, pursuant to paragraph (b)(1) of this section informs the claimant that the claimant must provide, must be provided within one year from the date of the notice. If VA does not receive such information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(3) If the claimant has not responded to the request within 30 days, VA may decide the claim before the expiration of the one-year period prescribed in paragraph (b)(2) of this section, 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 within one year of the date of the request, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award shall take effect as if the prior decision by VA on the claim had not been made.

(4) 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.

(5) For the purpose of this paragraph, 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, 5103A(a)(3))

[64 FR 23771, May 4, 1999, as amended at 72 FR 16965, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

### § 21.1032 VA has a duty to assist claimants in obtaining evidence.

(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 educational assistance under subpart C, D, G, H, K, L, or P 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 the initial 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) 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 end 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; and

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

(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) Makes 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 record of any oral notice conveyed under paragraph (e) of this section 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(b), 5103(a), 5103A)

[72 FR 16965, Apr. 5, 2007, as amended at 74 FR 14665, Mar. 31, 2009]

### § 21.1033 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) *Failure to furnish form, information, or notice of time limit.* VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions.

(Authority: 38 U.S.C. 5101, 5113)

(b) [Reserved]

(c) *Time limit for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35.* VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, § 21.7051, § 21.7551, or § 21.9535 by the later of the following dates:

(1) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

(d) *Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).* VA must receive a claim for an extended period of eligibility due to a suspension of an eligible

child's program of education as provided in §21.3043 by the later of the following dates.

(1) One year from the date on which the child's original period of eligibility ended; or

(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist.

(Authority: 38 U.S.C. 3512(c))

(e) *Extension for good cause.* (1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an adverse VA decision. VA may grant such an extension only when the following conditions are met:

(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and

(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.

(2) Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 5101, 5113)

(f) *Computation of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.

(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§20.302 and 20.305 of this chapter.

(Authority: 38 U.S.C. 501(a))

[64 FR 23771, May 4, 1999, as amended at 71 FR 1497, Jan. 10, 2006. Redesignated and amended at 72 FR 16965, 16966, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

### §21.1034 Appeals.

A claimant may appeal a decision of eligibility or entitlement to educational assistance under title 38, U.S.C., to the Board of Veterans Appeals in accordance with the provisions of 38 CFR part 20. A claimant may appeal a decision of entitlement to educational assistance under 10 U.S.C. 510 and 10 U.S.C. chapters 106a, 1606, and 1607 to the Board of Veterans Appeals in accordance with the provisions of 38 CFR part 20. A claimant may not appeal a decision of eligibility under 10 U.S.C. 510 or 10 U.S.C. chapters 106a, 1606, or 1607 or for supplemental or increased educational assistance under 10 U.S.C. 16131(i) or 38 U.S.C. 3015(d), 3021, or 3316 to VA as the Department of Defense solely determines eligibility to supplemental and increased educational assistance under those sections.

(Authority: 38 U.S.C. 501(a), 7105, 7105A)

[74 FR 14665, Mar. 31, 2009]

## Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

AUTHORITY: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

GENERAL

### §21.3001 Delegation of authority.

Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. chapter 35 and the applicable regulations,

precedents and instructions, as to the program authorized by this subpart.

(Authority: 38 U.S.C. 512(a))

[61 FR 26108, May 24, 1996]

### § 21.3002 Administration of Survivors' and Dependents' Educational Assistance Program.

Subpart D of this part applies to the Survivors' and Dependents' Educational Assistance Program, unless the provisions of a section in that subpart are explicitly limited to one or more of the other educational assistance programs VA administers.

(Authority: 38 U.S.C. 501, 3501–3566)

[61 FR 26108, May 24, 1996]

### § 21.3020 Educational assistance.

The program of educational assistance under 38 U.S.C. Chapter 35 captioned Survivors' and Dependents' Educational Assistance, may be referred to as Dependents' Educational Assistance.

(Authority: Sec. 309, 90 Stat. 2383)

(a) *General.* A program of education or special restorative training may be authorized for an eligible person who meets the definition contained in § 21.3021.

(b) *45 months limitation.* Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, unless it is determined that a longer period is required for special restorative training under the circumstances outlined in § 21.3300(c) or except as specified in § 21.3044(c).

(Authority: 38 U.S.C. 3511(a), 3533, 3541(b))

(c) *Courses in foreign countries.* A course to be pursued at a school not located in a State or in the Philippines may not be approved except under the circumstances outlined in § 21.4260.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 841, Jan. 18, 1969; 38 FR 14931, June 7, 1973; 43 FR 35289, Aug. 9, 1978]

### § 21.3021 Definitions.

For the purposes of subpart C and the payment of basic educational assistance under 38 U.S.C. chapter 35, the following definitions apply.

(a) *Eligible person* means:

(1) A child of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability.

(iii) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

(iv) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(2) The surviving spouse of a:

(i) Veteran who died of a service-connected disability.

(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability, arising out of active military, naval or air service after the beginning of the Spanish-American War. (See §§ 3.6(a) and 3.807 of this chapter.)

(3) The spouse of a:

(i) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.

(ii) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(b) *Child* means a son or daughter of a veteran as defined in § 3.807(d) of this chapter. The term includes a child of a Philippine Commonwealth Army veteran and a Philippine Scout (designated as a *New* Philippine Scout under 38 U.S.C. 3566(b)), as defined in § 3.40(b), (c), or (d) of this chapter, but educational assistance allowance may not be authorized based on such service for any period before September 30, 1966.

(c) *Wife and widow, spouse and surviving spouse*. The terms *wife* and *widow* mean an individual as defined in §3.807(d) of this chapter and the terms *spouse* and *surviving spouse* shall have the same respective meaning when used in the regulations in part 21, Title 38, Code of Federal Regulations. Educational assistance allowance may not be authorized for any such individuals for any period before December 1, 1968.

(Authority: 38 U.S.C. 3500, 3501, and 3511)

(d) *Parent or guardian* means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 3501(a)(4)) or it may be the eligible person if he or she has attained majority under laws applicable in his or her State of residence as shown on the application and is under no known legal disability. (38 U.S.C. 3501(b)) The eligible person may be designated as the person by whom required actions may be taken even though he or she has not attained majority, or having attained majority, is under a legal disability, when it is determined that to do otherwise would not be in his or her best interest, would result in undue delay or would not be administratively feasible. Where necessary to protect his or her interest and there is reason why the eligible person should not act for himself or herself, some other individual may be designated as the person by whom required actions should be taken.

(Authority: 38 U.S.C. 3501(c))

(e) *Armed Forces*, as to service by the eligible person, means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the Reserve components of each, the National Guard of the United States and the Air National Guard of the United States. (38 U.S.C. 3501 (a)(3) and (d) and 3512(a)) Effective December 31, 1970, the term includes the National Oceanic and Atmospheric Administration, the Environmental Science Services Administration and the Coast and Geodetic Survey, as to full-time duty of officers commissioned therein.

(Authority: 38 U.S.C. 101(21)(C))

(f) *Duty with the Armed Forces*, as to service by the eligible person, means active duty, active duty for training for a period of 6 or more consecutive months, or an initial period of active duty for training of not less than 3 months or more than 6 months in the Ready Reserve. (38 U.S.C. 3501(a)(3) and (d), 3512(a)) See §§21.3041 and 21.3042.

(g) *State* means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the Canal Zone. (38 U.S.C. 101(20)) (Although the Republic of the Philippines is not included in the definition of a State, eligible persons may pursue courses of training in that country.)

(h) *Program of education*. The term *program of education* means any curriculum or any combination of unit courses or subjects pursued at an educational institution that is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. The term program of education also includes—

(1) A preparatory course for a test that is required or used for admission to an institution of higher education;

(2) A preparatory course for a test that is required or used for admission to a graduate school; and

(3) A licensing or certification test, the successful completion of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided such tests and the licensing or credentialing organizations or entities that offer such tests are approved by VA.

(Authority: 38 U.S.C. 3002(3), 3501 (a)(5))

(i) *Educational objective*. An educational objective is one that leads to the awarding of a diploma, degree, or

certificate which reflects educational attainment.

(Authority: 38 U.S.C. 3501(a)(5))

(j) *Professional or vocational objective.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3501(a)(5))

(k) *School, educational institution, institution.* The terms *school, educational institution* and *institution* mean:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private secondary school;

(4) A training establishment as defined in § 21.4200(c); or

(5) An institution that provides specialized vocational training, generally recognized as on the secondary school level or above, for people with mental or physical disabilities.

(Authority: 38 U.S.C. 3501(a)(6), 3535)

(l) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3512(b))

(m) *Institution of higher education.* The term *institution of higher education* has the same meaning as provided in § 21.7020(b)(45).

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

(n) *Graduate school.* The term *graduate school* has the same meaning as provided in § 21.7020(b)(46).

(Authority: 38 U.S.C. 3002(3), 3501(a)(5))

(o) *Eligibility date.* The term *eligibility date* means the date on which an individual becomes an eligible person (as defined in paragraph (a) of this section).

(Authority: 38 U.S.C. 5113)

(p) *P&T* means permanent and total ''disability,'' permanently and totally ''disabled,'' or permanent and total ''rating,'' when any of these terms are used in reference to a veteran with a service-connected disability rating determined by VA to be total for the purposes of VA disability compensation where the impairment is reasonably certain to continue throughout the life of the disabled veteran.

(Authority: 38 U.S.C. 3501(a)(8))

(q) *Initial rating decision.* The term *initial rating decision* means, with respect to an eligible spouse or child, a decision made by VA that establishes for the person from whom such eligibility is derived—

(1) Service connection for the cause of the person's death;

(2) A service connected P&T disability; or

(3) For a member of the Armed Forces, a P&T disability incurred or aggravated in the line of duty in the active military, naval, or air service if the member is hospitalized or receiving outpatient medical care, services, or

treatment, and is likely to be discharged or released from such service for such disability.

(Authority: 38 U.S.C. 5113)

(r) *Effective date of the P&T rating.* The term *effective date of the P&T rating* means the date from which VA considers that the veteran's P&T disability commenced for purposes of VA benefits, as determined by the initial rating decision.

(Authority: 38 U.S.C. 3512(d))

(s) *First finds.* The term *first finds* means the effective date of the P&T rating or the date VA first notifies the veteran of that rating, whichever is more advantageous to the child.

(Authority: 38 U.S.C. 3512(d))

(t) *Counseling psychologist* means the same as provided in §21.35(k)(1).

(Authority: 38 U.S.C. 501, 3118(c), 3541, 3543)

(u) *Vocational rehabilitation counselor* means the same as provided in §21.35(k)(7).

(Authority: 38 U.S.C. 501, 3118(c), 3541, 3543)

(v) *Additional definitions.* The definitions of all terms that are defined in §§21.1029 and 21.4200 but that are not defined in this section apply to subpart C of this part.

(Authority: 38 U.S.C. 501, 3501)

CROSS REFERENCES: *Duty periods.* See §3.6 of this chapter.

*Persons included.* See §3.7 of this chapter.

*Philippine and insular forces.* See §3.40 of this chapter.

[36 FR 2508, Feb. 5, 1971, as amended at 38 FR 12110, May 9, 1973; 43 FR 35290, Aug. 9, 1978; 61 FR 26108, May 24, 1996; 61 FR 29295, June 10, 1996; 62 FR 51784, Oct. 3, 1997; 64 FR 23771, May 4, 1999; 73 FR 2423, Jan. 15, 2008; 73 FR 30488, May 28, 2008]

### §21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must choose which benefit he or she will receive for the particular period(s) of training during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(g) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(h) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note.);

(i) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note.); and

(j) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

[74 FR 14665, Mar. 31, 2009]

### §21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on school attendance on or after the age

of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) *Child; under 18 or helpless.* Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.

(c) *Child; election.* An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

(2) An election based on erroneous information furnished by an authorized representative of the Department of Veterans Affairs is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of education under DEA may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran's death.

(d) *Spouse or surviving spouse.* Educational assistance allowance may be paid for an eligible spouse or surviving spouse concurrently with pension, compensation or dependency and indemnity compensation.

(Authority: 38 U.S.C. 3562)

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0595)

CROSS REFERENCES: *Discontinuance.* See § 3.503(a)(8) of this chapter.

*Concurrent payments.* See § 3.707 of this chapter.

*Certification.* See § 3.807 of this chapter.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 842, Jan. 18, 1969; 40 FR 42879, Sept. 17, 1975; 50 FR 27826, July 8, 1985; 63 FR 45718, Aug. 27, 1998; 75 FR 32293, June 8, 2010]

### § 21.3024 Nonduplication; Federal Employees' Compensation Act.

(a) *Civilian employment.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based on the disability or death as a result of civilian employment of the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive.

(2) *Veteran, spouse and child—surviving spouse and child.* An eligible person may receive educational assistance

notwithstanding that the Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

(3) *Election*. An election of Office of Workers' Compensation Programs benefits, under the Federal employees' Compensation Act (FECA), by or for a child filed on or after July 4, 1966, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility. An election of Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) by a surviving spouse filed on or after December 1, 1968, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility.

(b) *Military service*. The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers' Compensation Program, under the Federal Employee's Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse*. A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive. The election may be made at any time.

(2) *Veteran, spouse and child—surviving spouse and child*. An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

CROSS REFERENCE: *Federal Employees' Compensation*. See § 3.708 of this chapter.

[40 FR 42879, Sept. 17, 1975, as amended at 50 FR 27826, July 8, 1985]

### § 21.3025 Nonduplication; Federal programs.

Payment of subsistence allowance and special training allowance is prohibited to an otherwise eligible person—

(a) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service); or

(b) For a unit course or courses which are being paid for under 5 U.S.C. chapter 41.

(Authority: 38 U.S.C. 3681(a))

[61 FR 26108, May 24, 1996]

CLAIMS

### § 21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

[64 FR 23772, May 4, 1999]

ELIGIBILITY AND ENTITLEMENT

### § 21.3040 Eligibility; child.

(a) *Commencement*. A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed:

(1) Compulsory school attendance age under State law; or

(2) His or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.

(b) *Secondary schooling. Completion of secondary schooling* means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent—usually completion of the 12th grade in the public school system.

(c) *Age limitation for commencement*. No person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before

the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces on whose service eligibility is claimed as being in one of the missing status categories of § 21.3021 (a)(1)(iv) and (3)(ii).

(d) *Termination of eligibility*. No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under § 21.3041(g)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See § 21.3300.

(Authority: 38 U.S.C. 3512(a))

[30 FR 15632, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 39 FR 38227, Oct. 30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978; 73 FR 30489, May 28, 2008]

### § 21.3041 Periods of eligibility; child.

(a) *Eligibility derived from a veteran with a P&T disability*. An eligible child's period of eligibility generally begins on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs. The period of eligibility generally ends on the earlier of the date of the child's 26th birthday or the date the veteran is no longer P&T disabled. VA will extend an eligible child's period of eligibility for the reasons listed in paragraphs (g) and (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible child after his or her 18th birthday and before his or her 26th birthday. If the veteran dies while the P&T rating is in effect and before the eligible child's 26th birthday, see paragraph (b) of this section to determine the new period of eligibility. Exceptions to this general period of eligibility are as follows:

(1) *Period of eligibility may begin before the child's 18th birthday*. The period of eligibility may begin before the eligible child's 18th birthday for one of the reasons in paragraphs (a)(1)(i), (ii), or (iii) of this section. The period of eligibility ends on the earlier of the date the veteran is no longer rated P&T disabled or the date of the child's 26th birthday. See § 21.3135(h) if the veteran is no longer rated P&T disabled.

(i) The child completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b));

(ii) The child is pursuing a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school; or

(iii) The child is beyond his or her 14th birthday and has a physical or mental handicap (see § 21.3040(a)).

(Authority 38 U.S.C. 3512(a))

(2) *Period of eligibility may begin after the child's 18th birthday*. A child's period of eligibility may begin after his or her 18th birthday if VA first finds the veteran has a P&T disability after the child's 18th birthday but before the child's 26th birthday. See paragraph (e) of this section if an adopted child becomes eligible through qualifying as the veteran's child after VA first finds the veteran has a P&T disability. See paragraph (f) of this section if a stepchild becomes eligible through qualifying as the veteran's child after VA first finds the veteran is P&T disabled.

(i) *Beginning date if the effective date of the initial P&T rating is before the child's 18th birthday and notification to the veteran occurs after the child's 18th birthday and before his or her 26th birthday*. If the effective date of the P&T rating is before the child's 18th birthday, and the date of notification to the veteran occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) If the child elects a beginning date that is before his or her 18th birthday, the period of eligibility ends the earlier of the date that the veteran is no longer rated P&T disabled, or the date of the child's 26th birthday. If the child elects a beginning date after his or her 18th birthday, the period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no longer rated P&T disabled.) The child can elect as a beginning date either—

(A) The date of his or her 18th birthday;

(B) The date he or she completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b)), if that date is on or after the effective date of the P&T rating and before his or her 18th birthday;

(C) The date he or she begins a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school, if that date is on or after the effective date of the P&T rating and before the date of notification to the veteran of the P&T rating. If the child elects the beginning date of enrollment in such course, he or she may not receive educational assistance for pursuit of secondary schooling unless secondary school pursuit is otherwise authorized (see § 21.3040);

(D) The date VA notifies the veteran of the P&T rating; or

(E) Any date between the applicable date described in paragraphs (a)(2)(i)(A) through (C) of this section and the date in paragraph (a)(2)(i)(D) of this section.

(ii) *Beginning date if the effective date of the P&T rating is after the child's 18th birthday and before child's 26th birthday.* If the effective date of the P&T rating occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) The period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled, or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no longer rated P&T disabled.) The child can elect as a beginning date—

(A) The effective date of the P&T rating;

(B) The date VA notifies the veteran of the veteran's P&T rating; or

(C) Any date in between.

(Authority: 38 U.S.C. 3512)

(b) *Eligibility derived as the result of veteran's death.* An eligible child's period of eligibility begins on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs. The period of eligibility ends on the child's 26th birthday. VA will extend an eligible child's period of eligibility for reasons shown in paragraphs (g) and (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible child after his or her 18th birthday and before his or her 26th birthday. Exceptions to this general period of eligibility are as follows:

(1) *Period of eligibility may begin before the child's 18th birthday.* The period of eligibility may begin before the eligible child's 18th birthday for one of the reasons in paragraphs (i), (ii), or (iii) of this paragraph. The ending date of the period of eligibility is the child's 26th birthday.

(i) The child completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b));

(ii) The child is pursuing a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school; or

(iii) The child is beyond his or her 14th birthday and has a physical or mental handicap (see § 21.3040(a)).

(Authority 38 U.S.C. 3512(a))

(2) *Period of eligibility may begin after the child's 18th birthday.* If the veteran's death occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. The period of eligibility ends 8 years after the beginning date the child elects. See paragraph (i) of this section for election requirements. VA may extend the period of eligibility for one of the reasons shown in paragraph (g) or (h) of this section. See paragraph (c) of this section if the child serves in the Armed Forces as an eligible person after his or her 18th birthday and before his or her 26th birthday. The child can elect as a beginning date any date between the—

(i) Date of the veteran's death; or

(ii) Date of VA's decision that the veteran's death was service-connected.

(Authority: 38 U.S.C. 3512(a)(3))

(c) *Period of eligibility for a child who serves on duty in the Armed Forces as an eligible person.* If the child serves on

duty in the Armed Forces as an eligible person (as defined in § 21.3021(a)(1)) after the child's 18th birthday and before the child's 26th birthday, the child is eligible for a modified ending date based on the provisions of this paragraph. Under the provisions of this paragraph, the period of eligibility ends 8 years after the date of the child's first discharge or release from such duty, or the child's 31st birthday, whichever is earlier. VA may extend the ending date for one of the reasons shown in paragraph (g) of this section. See paragraph (h) of this section if the child is ordered to active duty as a reservist.

(Authority: 38 U.S.C. 3512(a)(5))

(d) *Eligibility derived from a parent who is listed by the Armed Forces as missing in action, captured in the line of duty, or forcibly detained or interned in line of duty by a foreign government or power.* (1) If a child establishes eligibility through the provisions of § 21.3021(a)(1)(iv) after his or her 18th birthday but before his or her 26th birthday, the period of eligibility will end on the earliest of the following dates:

(i) When the parent is no longer listed as described in § 21.3021(a)(1)(iv);

(ii) Eight years after the date on which the child becomes eligible under such provisions; or

(iii) The child's 31st birthday.

(2) VA may extend the ending date for one of the reasons shown in paragraphs (g) or (h) of this section. See § 21.3135(i) if the child is enrolled in an educational institution and the child's ending date is based on paragraph (d)(1)(i) of this section. See paragraph (c) of this section if the child serves in the Armed Forces as an eligible person after his or her 18th birthday and before his or her 26th birthday.

(Authority: 38 U.S.C. 3512(a)(5))

(e) *Adopted child qualifies after VA firsts finds the veteran P&T disabled.* If an adopted child becomes eligible through qualifying as the veteran's child (see 38 CFR 3.57(c)) and the date the child so becomes eligible is after VA first finds the veteran is P&T disabled, the beginning date of eligibility is the date determined pursuant to paragraphs (a) through (d) of this section, but in no event before the date the adopted child qualifies as the veteran's child under § 3.57(c) of this chapter. The ending date is the child's 26th birthday. VA may extend the period of eligibility for one of the reasons in paragraph (g) or (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible person.

(Authority: 38 U.S.C. 3501)

(f) *Stepchild qualifies after VA first finds the veteran P&T disabled.* If a stepchild becomes eligible through qualifying as the veteran's child and a member of the veteran's household after VA first finds the veteran is P&T disabled, the beginning date of the period of eligibility is the date determined pursuant to paragraphs (a) through (d) of this section, but in no event before the date he or she becomes the veteran's stepchild and a member of the veteran's household. The ending date of the period of eligibility is the stepchild's 26th birthday. VA may extend the ending date for one of the reasons in paragraphs (g) or (h) of this section. See paragraph (c) of this section for the ending date of the period of eligibility if the stepchild serves on active duty in the Armed Forces as an eligible person. See § 21.3135(g) for award discontinuance dates if the veteran and the stepchild's natural or adopted parent divorce or the stepchild ceases to be a member of the veteran's household.

(g) *Extensions to ending dates.* (1) If an eligible child suspends pursuit of his or her program due to conditions that VA determined were beyond the child's control, VA may extend the period of eligibility ending date (see § 21.3043). VA cannot grant an extension beyond age 31 to those children whose period of eligibility ending date (as determined under paragraphs (a) through (f) of this section) is subject to an age limitation.

(2) If an eligible child's period of eligibility ending date (as determined under paragraphs (a) through (f), or (h) of this section) occurs while the child is enrolled in an educational institution, VA may extend the period of eligibility (extensions may be made beyond age 31)—

(i) To the end of the quarter or semester, for a child enrolled in an educational institution that regularly operates on the quarter or semester system; or

(ii) To the end of the course, not to exceed 12 weeks, for a child who completed a major portion of a course while enrolled in an educational institution that operates under other than a quarter or semester system.

(3) If an eligible child's period of eligibility ending date (as determined under paragraphs (a) through (f), or (h) of this section) occurs while the child is pursuing training in a training establishment (as defined in §21.4200(c)), VA cannot extend the ending date.

(Authority: 38 U.S.C. 3512(a)(7)(c)).

(h) Notwithstanding any other provision of this section, if during an eligible child's period of eligibility, as determined in paragraphs (a) through (g) of this section, but after September 10, 2001, an eligible child is ordered to active duty or involuntarily ordered to full-time National Guard duty VA will grant an extension of the child's period of eligibility. The extension will be equal to the length of the period served plus an additional 4 months for each qualifying period and applies if after September 10, 2001, the eligible child is—

(i) Ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, United States Code; or

(ii) Involuntarily ordered to full-time National Guard duty under section 502(f) of title 32, United States Code.

(Authority: 38 U.S.C. 3512(h))

(i) *Elections*. (1) VA must provide written notice to certain eligible children informing them of their right to elect the beginning date of their period of eligibility. The written notice must identify the beginning dates the child may choose from and must contain a statement that the child must make the election within 60 days of the date of the written notice. An eligible child may elect his or her beginning date if—

(i) The effective date of the P&T rating is before the child's 18th birthday, and date of the notification to the veteran from whom the child derives eligibility occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (a)(2)(i) of this section);

(ii) The effective date of the P&T rating, or the date of notification to the veteran from whom the child derives eligibility, occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (a)(2)(ii) of this section);

(iii) The veteran's death occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (b)(2) of this section);

(iv) The child makes such election within 60 days of VA's written notice to the child informing him or her of the right to elect his or her beginning date; and

(v) The child's election is in accordance with the choices VA identified in the written notice described in paragraph (i)(1) of this section.

(2) If the child does not elect a beginning date within 60 days of VA's written notice informing him or her of the right to elect a beginning date, the period of eligibility beginning date will be whichever of the following applies—

(i) The date of VA's decision that the veteran has a P&T disability; or

(ii) The date of VA's decision that the veteran's death is service-connected.

(3) If upon review of the child's application VA determines the child is entitled to and eligible for an immediate award of educational assistance under 38 U.S.C. chapter 35, VA will for purposes of such award—

(i) Consider the beginning date of the child's period of eligibility to be the date of VA's decision that the—

(A) Veteran has a P&T disability in the case of a child whose eligibility is derived from a veteran with a P&T disability; or

(B) Veteran's death is service-connected in the case of a child whose eligibility is derived due to the veteran's death.

(ii) Notify the child of his or her right to elect a beginning date in accordance with paragraph (i)(1) of this section.

(iii) Adjust the child's beginning date based on the child's election if the child makes an election within 60 days

after VA's written notice in accordance with paragraph (i)(1) of this section.

(Authority: 38 U.S.C. 3512(a)(3), (a)(4))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0703)

[73 FR 30489, May 28, 2008; 73 FR 31742, June 3, 2008]

### § 21.3042 Service with Armed Forces.

(a) No educational assistance under 38 U.S.C. chapter 35 may be provided an otherwise eligible person during any period he or she is on duty with the Armed Forces. See § 21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See § 21.3135(f).

(Authority: 38 U.S.C. 3501(d))

(b) If the eligible person served with the Armed Forces, his or her discharge or release from each period of service must have been under conditions other than dishonorable.

(Authority: 38 U.S.C. 3501(d))

[30 FR 15633, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 36 FR 2508, Feb. 5, 1971; 41 FR 42929, Nov. 1, 1976; 61 FR 26109, May 24, 1996; 73 FR 30491, May 28, 2008]

### § 21.3043 Suspension of program; child.

For an eligible person who suspends his program due to conditions determined by the Department of Veterans Affairs to have been beyond his or her control the period of eligibility may, upon his request, be extended by the number of months and days intervening the date the suspension began and the date the reason for suspension ceased to exist. The burden of proof is on the eligible person to establish that suspension of a program was due to conditions beyond his or her control. The period of suspension shall be considered to have ended as of the date of the person's first available opportunity to resume training after the condition which caused it ceased to exist. The following circumstances may be considered as beyond the eligible person's control:

(a) While in active pursuit of a program of education he or she is appointed by the responsible governing body of an established church, officially charged with the selection and designation of missionary representatives, in keeping with its traditional practice, to serve the church in an official missionary capacity and is thereby prevented from pursuit of his or her program of studies.

(b) Immediate family or financial obligations beyond his or her control require the eligible person to take employment, or otherwise preclude pursuit of his or her program.

(c) Unavoidable conditions arising in connection with the eligible person's employment which preclude pursuit of his or her program.

(d) Pursuit of his or her program is precluded because of the eligible person's own illness or illness or death in his or her immediate family.

(e) Active duty, including active duty for training in the Armed Forces.

[41 FR 47929, Nov. 1, 1976]

### § 21.3044 Entitlement.

(a) *Limitations on entitlement.* Each eligible person in entitled to educational assistance not in excess of 45 months, or the equivalent thereof in part-time training. The Department of Veterans Affairs will not authorize an extension of entitlement except as provided in paragraph (c) of this section. The period of entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which employment adjustment allowance was paid after the eligible person completes a period of rehabilitation and reaches a point of employability.

(b) *Continuous pursuit is not required.* The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program for 45 consecutive months.

(Authority: 38 U.S.C. 3511(a))

(c) *Exceeding the 45 months limitation.* The 45 months limitation may be exceeded only in the following cases:

(1) Where no charge against the entitlement is made based on a course or

courses pursued by a spouse or surviving spouse under the special assistance for the educationally disadvantaged program (See §21.3344(d); or

(2) Where special restorative training authorized under §21.3300 exceeds 45 months.

(Authority: 38 U.S.C. 3541(b), 3533(b))

[49 FR 48692, Dec. 14, 1984, as amended at 61 FR 26109, May 24, 1996]

### §21.3045 Entitlement charges.

VA will make record-purpose charges against an eligible person's 38 U.S.C. chapter 35 entitlement only when required by this section. Charges for institutional training will be based upon the principle that an eligible person who trains full time for 1 day should be charged 1 day of entitlement.

(a) *No entitlement charge for eligible persons receiving tutorial assistance.* VA will make no charge against the entitlement of an eligible person for tutorial assistance received in accordance with §21.4236.

(Authority: 38 U.S.C. 3492, 3533(b))

(b) *Entitlement charges for elementary and secondary education.* (1) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in §21.3344, there are two sets of circumstances which will always result in VA's making no charge against his or her entitlement. These are as follows:

(i) Either the eligible spouse or surviving spouse completed training during the period beginning on October 1, 1980, and ending on August 14, 1989, and remained continuously enrolled from October 1, 1980, through the time the spouse or surviving spouse either completed training or August 14, 1989, whichever is earlier; or

(ii) The eligible spouse or surviving spouse completed training before August 15, 1989, and received educational assistance based upon the tuition and fees charged for the course.

(2) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in §21.3344, the following circumstances will always result in VA's making a charge against his or her entitlement unless the provisions of paragraph (d) of this section would exempt the spouse or surviving spouse from receiving an entitlement charge.

(i) The spouse or surviving spouse elects to receive dependents' educational assistance at the rate described in §21.3131(a), and

(ii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1, 1980, or has not remained continuously enrolled in such a course since October 1, 1980.

(3) When an eligible person pursues refresher, remedial or deficiency training before August 15, 1989, the following provisions govern the charge against the entitlement.

(i) VA will not make a charge against the entitlement of an eligible spouse or surviving spouse.

(ii) VA will make a charge against the entitlement of an eligible child.

(4) The following provisions apply to an eligible person for training received after August 14, 1989. When he or she is pursuing a course leading to a secondary school diploma or equivalency certificate or refresher, remedial or deficiency training.

(i) VA will make no charge against the entitlement of an eligible person for the first five months of full time pursuit (or its equivalent in part-time pursuit).

(ii) VA will make a charge against the entitlement of an eligible person for pursuit in excess of the pursuit described in paragraph (b)(4)(i) unless the provisions of paragraph (d) of this section would exempt the eligible person from receiving an entitlement charge.

(Authority: 38 U.S.C. 3511(a), 3533(a); Pub. L. 100–689, Pub. L. 102–127)(Oct. 10, 1991)

(c) *Other courses for which entitlement will be charged.* Except when the requirements of paragraph (d) of this section are met, VA will make a charge against the period of entitlement of—

(1) An eligible person for pursuit of a program of apprenticeship or other on-job training;

(2) A spouse or surviving spouse for pursuit of a correspondence course; or

(3) An eligible person for the pursuit of any course not described in paragraph (a) or (b) of this section.

(Authority: 38 U.S.C. 3534)

(d) *Exemption from entitlement charge.* (1) VA will not make a charge against the entitlement of an eligible person for the pursuit of any course or courses when the requirements of paragraphs (d)(1)(i) and (ii) of this section are met, by VA finding that the eligible person—

(i) Had to discontinue pursuit of the course or courses as a result of being—

(A) Ordered, in connection with the Persian Gulf War by orders dated before September 11, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, or under former 10 U.S.C. 672(a), 672(d), 672(g), 673, or 673(b) (redesignated effective December 1, 1994, as 10 U.S.C. 12301(a), 12301(d), 12301(g), 12302, and 12304, respectively);

(B) Ordered, by orders dated after September 10, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(C) Involuntarily ordered, by orders dated after September 10, 2001, to full-time National Guard duty under 32 U.S.C. 502(f).

(ii) Failed to receive credit or training time toward completion of the eligible person's approved educational, professional or vocational objective as a result of having to discontinue, for a reason described in paragraph (d)(1)(i) of this section, his or her course pursuit.

(2) The period for which VA will not make a charge against entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the eligible person failed to receive credit or with respect to which the eligible person lost training time.

(Authority: 38 U.S.C. 3511(a)(2); sec. 103(e), Pub. L. 107–103, 115 Stat. 980)

(e) *Determining entitlement charge.* The provisions of this paragraph apply to all courses except those courses for which VA is not making a charge against the eligible person's entitlement, apprenticeship or other on-job training, correspondence courses, and courses offered solely through independent study.

(1) After making any adjustments required by paragraph (e)(3) of this section, VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit) if the eligible person is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the eligible person is pursuing a program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less that one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of enrollment to date of discontinuance. If the eligible person changes his or her training time after the commencing date of enrollment, VA will—

(i) Divide the enrollment period into separate periods of time during which the eligible person's training time remains constant; and

(ii) Compute the elapsed time separately for each time period.

(3) An eligible person may concurrently enroll in refresher, remedial or deficiency training for which paragraph (b)(3) or (b)(4)(i) of this section requires no charge against entitlement and in a course or courses for which paragraph (b)(2) or (b)(4)(ii) or (c) of this section requires a charge against entitlement. When this occurs, VA will charge entitlement for the concurrent enrollment based only on pursuit of the courses described in paragraph (b)(2) or (b)(4)(ii) or (c) of this section, measured in accordance with §§ 21.4270 through 21.4275 of this part, as appropriate.

(Authority: 38 U.S.C. 3533(a); Pub. L. 100–689)

(f) *Entitlement charge for pursuit solely by independent study.* For enrollments in terms, quarters, or semesters that begin after June 30, 1993, VA will make charges against the entitlement of an eligible person in the manner prescribed by paragraph (e) of this section, if he or she is pursuing a program of education solely by independent study.

For all other enrollments where the eligible person is pursuing a program of education solely by independent study, the computation will be made as though the eligible person's training were one-quarter time.

(Authority: 38 U.S.C. 3482(b), 3532(a))

(g) *Entitlement charge for apprenticeship or other on-job training.* For each month that an eligible person is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, including months in which the eligible person fails to complete 120 hours of training, VA will make a record-purpose charge against 38 U.S.C. chapter 35 entitlement, if any, as follows:

(1) For training pursued before October 1, 2005, VA will reduce chapter 35 entitlement by one month for each month of benefits paid.

(2) For training pursued on or after October 1, 2005, VA will reduce chapter 35 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution.

(Authority: 38 U.S.C. 3534, 3687; sec. 102, Pub L. 108–454, 118 Stat. 3600)

(h) *Entitlement charge for correspondence courses.* The charge against entitlement of a spouse or surviving spouse for pursuit of a course exclusively by correspondence will be 1 month for each of the following amounts paid as an educational assistance allowance:

(1) $788.00, paid after June 30, 2004, and before October 1, 2004;

(2) $803.00, paid after September 30, 2004, and before October 1, 2005;

(3) $827.00, paid after September 30, 2005, and before October 1, 2006;

(4) $860.00, paid after September 30, 2006, and before October 1, 2007;

(5) $881.00, paid after September 30, 2007, and before October 1, 2008; and

(6) $915.00, paid after September 30 2008.

(Authority: 38 U.S.C. 3534(b), 3564, 3686(a))

(i) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and is not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (i)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3471, 3532)

(j) *Interruption to conserve entitlement.* An eligible person may not interrupt a certified period of enrollment for the

purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the eligible person is enrolled for the term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the eligible person is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment is actually terminated;

(2) The eligible person cancels his or her enrollment, and does not negotiate an educational benefits check for any part of the certified period of enrollment;

(3) The eligible person interrupts his or her enrollment at the end of any term, quarter, or semester within the certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;

(4) The eligible person requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the eligible person negotiated a check for educational benefits for the certified period is immaterial.

(Authority: 38 U.S.C. 3511)

(k) *Education loan after otherwise applicable delimiting date—spouse or surviving spouse.* VA will make a charge against the entitlement of a spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 day for each day of entitlement that would have been used had the spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted.

(Authority: 38 U.S.C. 3512)

[55 FR 28024, July 9, 1990, as amended at 57 FR 29799, July 7, 1992; 58 FR 26240, May 3, 1993; 61 FR 26109, May 24, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 67778, Dec. 9, 1998; 66 FR 32227, June 14, 2001; 68 FR 34320, June 9, 2003; 69 FR 62207, Oct. 25, 2004; 73 FR 2423, Jan. 15, 2008; 73 FR 79647, Dec. 30, 2008]

### § 21.3046 Periods of eligibility; spouses and surviving spouses.

This section states how VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.

(Authority: 38 U.S.C. 3512(b))

(a) *Beginning date of eligibility period-spouses.* (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.

(2) The beginning date of eligibility—

(i) Shall be determined as provided in paragraph (a)(2) of this section when—

(A) The permanent total rating is effective after November 30, 1968, or the notification to the veteran of the rating was after that date, and

(B) Eligibility does not arise under § 21.3021(a)(3)(ii) of this part.

(ii) For spouses for whom VA made a final determination of eligibility before October 28, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, whichever is more advantageous to the spouse.

(iii) For spouses for whom VA made a final determination of eligibility after October 27, 1986, shall be—

(A) The effective date of the rating, or

(B) The date of notification, or

(C) Any date between the dates specified in paragraphs (a)(2)(iii) (A) and (B) of this section as chosen by the eligible spouse.

(iv) May not be changed once a spouse has chosen it as provided in paragraph (a)(2)(iii) of this section.

(3) If eligibility arises under §21.3021(a)(3)(ii) of this part, the beginning date of the 10-year eligibility period is—

(i) December 24, 1970, or

(ii) The date the member of the Armed Forces on whose service eligibility is based was so listed by the Secretary concerned, whichever last occurs.

(Authority: 38 U.S.C. 3501(a); Pub. L. 99–576)

(b) *Beginning date of eligibility period-surviving spouses.* (1) If VA determines before December 1, 1968, that the veteran died of a service-connected disability, the beginning date of the 10-year period is December 1, 1968.

(Authority: 38 U.S.C. 3512)

(2) If the veteran's death occurred before December 1, 1968, but VA does not determine that the veteran died of a service-connected disability until after November 30, 1968, the beginning date of the 10-year period is the date on which VA determines that the veteran died of a service-connected disability.

(3) If the veteran's death occurred before December 1, 1968, while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is December 1, 1968.

(4) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents' educational assistance before October 28, 1986, the beginning date of the 10-year period is—

(i) The date of death of the veteran who dies while a total, service-connected disability evaluated as permanent in nature was in existence, or

(ii) The date on which VA determines that the veteran died of a service-connected disability.

(5) If the veteran's death occurred after November 30, 1968, and VA makes a final decision concerning the surviving spouse's eligibility for dependents educational assistance after October 27, 1986, VA will determine the beginning date of the 10-year period as follows.

(i) If the surviving spouse's eligibility is based on the veteran's death while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is the date of death.

(ii) If the surviving spouse's eligibility is based on the veteran's death from a service-connected disability, the surviving spouse will choose the beginning date of the 10-year period. That date will be no earlier than the date of death and no later than the date of the VA determination that the veteran's death was due to a service-connected disability.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99–576)

(6) Once a surviving spouse has chosen a beginning date of eligibility as provided in paragraph (b)(5) of this section, the surviving spouse may not revoke that choice.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99–576)

(c) *Ending date of eligibility period*—(1) *Spouses.* (i) If on or after December 27, 2001, VA makes a determination of eligibility for a spouse, the period of eligibility cannot exceed 10 years. The eligibility period can be extended only as provided in paragraph (c)(3) of this section and §21.3047.

(ii) If before December 27, 2001, VA made a determination of eligibility for a spouse, the eligibility period has no ending date unless the spouse changes his or her program of education. If on or after December 27, 2001, the spouse changes his or her program of education, the eligibility period cannot exceed 10 years. The beginning date of the eligibility period is determined as provided in paragraph (a) of this section. The 10-year eligibility period can be extended only as provided in paragraph (c)(3) of this section and §21.3047.

(iii) Notwithstanding the provisions of paragraph (c)(1)(i) of this section, if eligibility arises before October 24, 1972, educational assistance will not be afforded later than October 23, 1982, based on a course or program of correspondence, apprentice, or other on-the-job training, approved under the provisions of §21.4256, §21.4261, or §21.4262, except that VA may award educational assistance beyond October

23, 1982, if the eligible spouse qualifies for the extended period of eligibility as provided in paragraph (c)(3) of this section and § 21.3047.

(2) *Surviving spouses.* (i) For surviving spouses, the period of eligibility cannot exceed 10 years and can be extended only as provided in paragraph (c)(3) of this section and § 21.3047.

(ii) If eligibility arises before October 24, 1972, educational assistance will not be afforded later than October 23, 1982, based on a course or program of correspondence, apprentice, or other on-the-job training approved under the provisions of § 21.4256, § 21.4261, or § 21.4262, except that VA may award educational assistance beyond October 23, 1982, if the eligible surviving spouse qualifies for an extended period of eligibility as provided in paragraph (c)(3) of this section and § 21.3047.

(iii) The eligibility period for a surviving spouse is not reduced by any earlier period during which the surviving spouse was eligible for educational assistance under this chapter as a spouse.

(Authority: 38 U.S.C. 3512; sec. 108(c)(4), Pub. L. 107–103, 115 Stat. 985)

(3) *Extensions due to certain orders dated after September 10, 2001.* Notwithstanding any other provisions of this section, if a spouse or surviving spouse, during the eligibility period otherwise applicable to such individual under this section, serves on active duty pursuant to an order to active duty dated after September 10, 2001, issued under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, or is involuntarily ordered by an order dated after September 10, 2001, to full-time National Guard duty under 32 U.S.C. 502(f), VA will grant the individual an extension of the ending date of his or her eligibility period. The extension will equal the length of the period of such active duty plus four months.

(Authority: 38 U.S.C. 3512; sec. 303(b), Pub. L. 108–183, 117 Stat. 2659)

(d) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, VA will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, VA will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of the course, or

(ii) The total additional amount of instruction that—

(A) $2,206 provides during the period July 1, 2004, through September 30, 2004;

(B) $2,248 provides during the period October 1, 2004, through September 30, 2005;

(C) $2,316 provides during the period October 1, 2005, through September 30, 2006;

(D) $2,408 provides during the period October 1, 2006, through September 30, 2007;

(E) $2,467 provides during the period October 1, 2007, through September 30, 2008; or

(F) $2,562 provides after September 30, 2008.

(Authority: 38 U.S.C. 3511(b))

(5) VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) of this section or §21.3047, as appropriate.

(Authority: 38 U.S.C. 3511(b), 3512(b), 3532, 3586)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29799, July 7, 1992; 57 FR 60735, Dec. 22, 1992; 62 FR 51784, Oct. 3, 1997; 62 FR 59579, Nov. 4, 1997; 69 FR 62207, Oct. 25, 2004; 73 FR 2424, Jan. 15, 2008; 73 FR 79647, Dec. 30, 2008]

### §21.3047 Extended period of eligibility due to physical or mental disability.

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by §21.3046 provided the eligible spouse or surviving spouse:

(i) Applies for the extension within the appropriate time limit;

(ii) Was prevented from initiating or completing the chosen program of education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by §21.3046(c); and

(2) Must be on or before the ninetieth day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the ninetieth day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by §21.3046(c); or

(iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the eligible spouse's or surviving spouse's training became medically feasible; or

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900–0573)

(Authority: 38 U.S.C. 3512(b))

[62 FR 51784, Oct. 3, 1997]

COUNSELING

SOURCE: 61 FR 26109, May 24, 1996, unless otherwise noted.

### § 21.3100 Counseling.

(a) *Purpose of counseling.* The purpose of counseling is to assist:

(1) In selecting an educational or training objective;

(Authority: 38 U.S.C. 3520)

(2) In developing a suitable program of education or training;

(Authority: 38 U.S.C. 3520)

(3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective;

(Authority: 38 U.S.C. 3561(a))

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program;

(Authority: 38 U.S.C. 3561(a))

(5) In selecting an employment objective for the eligible person that would be likely to provide the eligible person with satisfactory employment opportunities in light of his or her circumstances.

(Authority: 38 U.S.C. 3520, 3561(a))

(b) *Availability of counseling.* Counseling assistance is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training; or

(2) In considering changes in career plans, and making sound decisions about the changes.

(Authority: 38 U.S.C. 3520, 3561(a))

(c) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the eligible person.

(Authority: 38 U.S.C. 3520, 3561(a))

### § 21.3102 Required counseling.

(a) *Child.* The VA counseling psychologist will provide counseling and assist in preparing the educational plan only if the eligible child or his or her parent or guardian requests assistance, except that counseling is required for an eligible child if—

(1) The eligible child may require specialized vocational training or special restorative training; or

(2) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday, nor completed secondary schooling. See § 21.3040(a).

(b) *Spouse or surviving spouse.* Counseling is required for a spouse or surviving spouse only if he or she desires specialized vocational training.

(Authority: 38 U.S.C. 3520, 3536, 3541, 3561)

### § 21.3103 Failure to cooperate.

VA will not act further on an eligible person's application for assistance under 38 U.S.C. chapter 35 when counseling is required for him or her and the eligible person—

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under § 21.3102.

(Authority: 38 U.S.C. 3536, 3541, 3561(a))

**§21.3104 Special training.**

(a) *Initial counseling.* A counseling psychologist or vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division will counsel an eligible person with a disability who is a child, spouse, or surviving spouse before referring the case to the Vocational Rehabilitation Panel (established under §21.60) for consideration as to the child's, spouse's or surviving spouse's need for a course of specialized vocational training or special restorative training. After consulting with the panel, and considering the panel's report, the counseling psychologist or vocational rehabilitation counselor will determine if the child, spouse, or surviving spouse needs a course of specialized vocational training or special restorative training, and where need is found to exist will prescribe a course which is suitable to accomplish the goals of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3536, 3540–3543, 3561(a))

(b) *Counseling after special restorative training.* When an eligible person completes or discontinues a course of special restorative training without having selected an objective and a program of education, a counseling psychologist or vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division will provide additional counseling to assist him or her in selecting a program of education suitable to accomplish the purposes of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3561)

[61 FR 26109, May 24, 1996, as amended at 73 FR 2424, Jan. 15, 2008]

**§21.3105 Travel expenses.**

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for an eligible person who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).

(Authority: 38 U.S.C. 111 (a), (d), (e), and (g))

(b) *Restriction.* VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the eligible person.

(Authority: 38 U.S.C. 111)

PAYMENTS

**§21.3130 Educational assistance.**

(a) *Approval of a program of education.* VA will approve a program of education selected by an eligible person if:

(1) The program is described in §21.3021 (h) and (i) or (j);

(2) The individual is not already qualified for the objective of the program of education;

(3) The proposed educational institution or training establishment is in compliance with all the requirements of 38 U.S.C. chapters 35 and 36; and

(4) It does not appear that the enrollment in or pursuit of such person's program of education would violate any provision of 38 U.S.C. chapters 35 and 36.

(Authority: 38 U.S.C. 3521)

(b) *Payments.* VA will pay educational assistance at the rate specified in §21.3131 (subject to the reductions required by §21.3132) while the eligible person is pursuing an approved program of education or training.

(Authority: 38 U.S.C. 3521, 3532)

(c) *No payment for excessive training.* (1) VA will make no payment for:

(i) Training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency or VA; or

(ii) Lessons completed in a correspondence course in excess of the number approved by the State approving agency.

(2) A school's standards of progress may permit a student to repeat a course or portion of a course in which he or she has done poorly. VA considers the repeated courses to be part of the program of education. VA will make no payment for courses or training if the courses or training are not part of the eligible person's program of education.

(Authority: 38 U.S.C. 3501(a)(5), 3521)

(d) *Courses precluded.* VA may not pay educational assistance:

(1) For pursuit of a course if approval of the enrollment in the course is precluded by § 21.4252;

(2) For training in a foreign country unless the training is in the Philippines or is approved pursuant to the provisions of § 21.4260;

(3) For pursuit of a course offered by open-circuit television, unless the eligible person's pursuit meets the requirements of § 21.4233(c); or

(4) For pursuit of a course offered by independent study, unless the course is accredited, meets the requirements of § 21.4253, and leads to a standard college degree.

(Authority: 38 U.S.C. 3523)

(e) *Commencing date.* In determining the commencing date of an award of educational assistance, VA will apply the provisions of § 21.4131.

(Authority: 38 U.S.C. 5113)

[61 FR 26109, May 24, 1996, as amended at 73 FR 2424, Jan. 15, 2008]

### § 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance under 38 U.S.C. chapter 35 is payable at the following monthly rates—

(1) For training pursued after June 30, 2004, and before October 1, 2004:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $788.00 |
| ¾ time | 592.00 |
| ½ time | 394.00 |
| Less than ½ but more than ¼ time [1] | 394.00 |
| ¼ time or less [1] | 197.00 |
| Cooperative training (other than farm cooperative) (full time only). | 788.00 |
| Apprenticeship or on-job (full time only): [2] | |
| First six months | 574.00 |
| Second six months | 429.00 |
| Third six months | 285.00 |
| Fourth six months and thereafter | 144.00 |
| Farm cooperative: | |
| Full time | 636.00 |
| ¾ time | 477.00 |
| ½ time | 319.00 |
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly. [3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $394.00 or $197.00, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(2) For training pursued after September 30, 2004, and before October 1, 2005:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $803.00 |
| ¾ time | 603.00 |
| ½ time | 401.00 |
| Less than ½ but more than ¼ time [1] | 401.00 |
| ¼ time or less [1] | 200.75 |
| Cooperative training (other than farm cooperative) (full time only). | 803.00 |
| Apprenticeship or on-job (full time only): [2] | |
| First six months | 585.00 |
| Second six months | 438.00 |
| Third six months | 291.00 |
| Fourth six months and thereafter | 147.00 |
| Farm cooperative: | |
| Full time | 648.00 |

| Type of course | Monthly rate |
|---|---|
| ¾ time | 486.00 |
| ½ time | 325.00 |
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $401.00 or $200.75, as appropriate, per month, if the maximum allowance is not initially authorized.
[2] *See* footnote 5 of §21.4270(c) for measurement of full time and §21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.
[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(3) For training pursued after September 30, 2005, and before October 1, 2006:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $827.00 |
| ¾ time | 621.00 |
| ½ time | 413.00 |
| Less than ½ but more than ¼ time[1] | 413.00 |
| ¼ time or less[1] | 206.75 |
| Cooperative training (other than farm cooperative) (full time only). | 827.00 |
| Apprenticeship or on-job (full time only):[2] | |
| First six months | 650.00 |
| Second six months | 507.00 |
| Third six months | 366.00 |
| Fourth six months and thereafter | 151.00 |
| Farm cooperative: | |
| Full time | 667.00 |
| ¾ time | 500.00 |
| ½ time | 334.00 |
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $413.00 or $206.75, as appropriate, per month, if the maximum allowance is not initially authorized.
[2] *See* footnote 5 of §21.4270(c) for measurement of full time and §21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.
[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(4) For training pursued after September 30, 2006, and before October 1, 2007:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $860.00 |
| ¾ time | 645.00 |
| ½ time | 429.00 |
| Less than ½ but more than ¼ time[1] | 429.00 |
| ¼ time or less[1] | 215.00 |
| Cooperative training (other than farm cooperative) (full time only). | 860.00 |
| Apprenticeship or on-job (full time only):[2] | |
| First six months | 676.00 |
| Second six months | 527.00 |
| Third six months | 380.00 |
| Fourth six months and thereafter | 157.00 |
| Farm cooperative: | |
| Full time | 693.00 |
| ¾ time | 520.00 |
| ½ time | 347.00 |

| Type of course | Monthly rate |
|---|---|
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $429.00 or $215.00, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(5) For training pursued after September 30, 2007, and before January 1, 2008:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $881.00 |
| ¾ time | 661.00 |
| ½ time | 439.00 |
| Less than ½ but more than ¼ time[1] | 439.00 |
| ¼ time or less[1] | 220.25 |
| Cooperative training (other than farm cooperative) (full time only). | 881.00 |
| Apprenticeship or on-job (full time only):[2] | |
| First six months | 692.00 |
| Second six months | 540.00 |
| Third six months | 389.00 |
| Fourth six months and thereafter | 160.00 |
| Farm cooperative: | |
| Full time | 710.00 |
| ¾ time | 533.00 |
| ½ time | 355.00 |
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $439.00 or $220.25, as appropriate, per month, if the maximum allowance is not initially authorized.

[2] *See* footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(6) For training pursued after December 31, 2007, and before October 1, 2008:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $881.00 |
| ¾ time | 661.00 |
| ½ time | 439.00 |
| Less than ½ but more than ¼ time[1] | 439.00 |
| ¼ time or less[1] | 220.25 |
| Cooperative training (other than farm cooperative) (full time only). | 881.00 |
| Apprenticeship or on-job (full time only):[2] | |
| First six months | 641.00 |
| Second six months | 480.00 |
| Third six months | 317.00 |
| Fourth six months and thereafter | 160.00 |
| Farm cooperative: | |
| Full time | 710.00 |
| ¾ time | 533.00 |
| ½ time | 355.00 |

| Type of course | Monthly rate |
|---|---|
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $439.00 or $220.25, as appropriate, per month, if the maximum allowance is not initially authorized.
[2] *See* footnote 5 of §21.4270(c) for measurement of full time and §21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.
[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(7) For training pursued after September 30, 2008:

| Type of course | Monthly rate |
|---|---|
| Institutional: | |
| Full time | $915.00 |
| ¾ time | 686.00 |
| ½ time | 456.00 |
| Less than ½ but more than ¼ time[1] | 456.00 |
| ¼ time or less[1] | 227.75 |
| Cooperative training (other than farm cooperative) (full time only). | 915.00 |
| Apprenticeship or on-job (full time only):[2] | |
| First six months | 666.00 |
| Second six months | 499.00 |
| Third six months | 329.00 |
| Fourth six months and thereafter | 166.00 |
| Farm cooperative: | |
| Full time | 737.00 |
| ¾ time | 553.00 |
| ½ time | 368.00 |
| Correspondence | 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[3] |

[1] If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $456.00 or $227.75, as appropriate, per month, if the maximum allowance is not initially authorized.
[2] *See* footnote 5 of §21.4270(c) for measurement of full time and §21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.
[3] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(b) *Less than half time*. The monthly rate for an eligible person who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course computed on basis of the total cost for tuition and fees which the school requires similarly circumstanced individuals enrolled in the same course to pay. ''Cost of the course'' does not include the cost of books or supplies which the student is required to purchase at his or her own expense.

(Authority: 38 U.S.C. 3532(a)(2))

(c) *Courses leading to a secondary school diploma or equivalency certificate*. The monthly rate of Survivors' and Dependents' Educational Assistance payable for an eligible person enrolled in a course leading to a secondary school diploma or equivalency certificate shall be the rate for institutional training stated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3532(d), 3533)

(d) *Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos*. When the eligible person is pursuing training at an institution

located in the Republic of the Philippines or when an eligible child's entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.40 (b), (c), or (d) of this chapter, payments of educational assistance allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.

(Authority: 38 U.S.C. 3532(d), 3565)

[61 FR 26110, May 24, 1996, as amended at 63 FR 67778, Dec. 9, 1998; 66 FR 32227, June 14, 2001; 68 FR 34321, June 9, 2003; 68 FR 37206, June 23, 2003; 69 FR 62207, Oct. 25, 2004; 73 FR 79647, Dec. 30, 2008]

### § 21.3132 Reductions in survivors' and dependents' educational assistance.

The monthly rates established in § 21.3131 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *No educational assistance allowance for some incarcerated eligible persons.* VA will pay no educational assistance allowance to an eligible person who:

(1) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and

(2) Is enrolled in a course:

(i) For which there are no tuition or fees, or charges for books, supplies, and equipment; or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and the eligible person is incurring no charge for the books, supplies, and equipment necessary for the course.

(Authority: 38 U.S.C. 3532(e))

(b) *Reduced educational assistance allowance for some incarcerated eligible persons—felony conviction.* (1) VA will pay a reduced educational assistance allowance to an eligible person who:

(i) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and

(ii) Is enrolled in a course:

(A) For which the eligible person pays some (but not all) of the charges for tuition and fees; or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the eligible person to pay for books, supplies, and equipment.

(2) The monthly rate of educational assistance allowance payable to such an eligible person who is pursuing a course on a half-time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or

(ii) The monthly rate stated in § 21.3131.

(3) The monthly rate of educational assistance payable to such an eligible person who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course;

(ii) The monthly rate of tuition and fees which the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or

(iii) The monthly rate stated in § 21.3131.

(Authority: 38 U.S.C. 3482(g))

(c) *Reduction in training assistance allowance.* (1) For any month in which an eligible person pursuing an apprenticeship or on-job training program fails to complete 120 hours of training, VA shall reduce the rate specified in § 21.3131(a) proportionally. In this computation VA shall round the number of hours worked to the nearest multiple of eight.

(2) For the purpose of this paragraph *hours worked* include only:

(i) The training hours the eligible person worked; and

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages.

(Authority: 38 U.S.C. 3687(b)(3))

(d) *Mitigating circumstances.* (1) VA will not pay benefits to any eligible person for a course from which the eligible person withdraws or receives a

nonpunitive grade which is not used in computing the requirements for graduation unless the provisions of this paragraph are met.

(i) The eligible person withdraws because he or she is ordered to active duty; or

(ii) All of the following criteria are met:

(A) There are mitigating circumstances;

(B) The eligible person submits a description of the circumstances in writing to VA either within one year from the date VA notifies the eligible person that he or she must submit the mitigating circumstances or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(C) The eligible person submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3680(a); Pub. L. 102–127)(Aug. 1, 1990)

(2) The following circumstances are representative of those which the Department of Veterans Affairs considers to be mitigating provided they prevent the eligible person from pursuing the program of education continuously. This list is not all inclusive.

(i) An illness of the eligible person,

(ii) An illness or death in the eligible person's family,

(iii) An unavoidable geographical transfer resulting from the eligible person's employment,

(iv) An unavoidable change in the eligible person's conditions of employment,

(v) Immediate family or financial obligations beyond the control of the eligible person which require him or her to suspend pursuit of the program of education to obtain employment,

(vi) Discontinuance of a course by a school,

(vii) Unanticipated active duty for training,

(viii) Unanticipated difficulties in caring for the eligible person's child or children.

(Authority: 38 U.S.C. 3680)

(3) If the eligible child fails to complete satisfactorily a course of special restorative training or if the eligible person fails to complete satisfactorily a course under section 3533, Title 38 U.S.C., without fault, the Department of Veterans Affairs will consider the circumstances which caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(4) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the eligible person received educational assistance under title 38 U.S.C. or under chapter 1606, title 10 U.S.C., VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. Eligible persons to whom the provisions of this subparagraph apply are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

(Authority: 38 U.S.C. 3680(a)(4); Pub. L. 100–689)

(5) If an eligible person withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating. Eligible persons who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

(Authority: 38 U.S.C. 3680(a))

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4137, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### §21.3133 Payment procedures.

(a) *Release of payments and payment procedures*. In determining whether

payments of educational assistance allowance may be made in a lump sum, in advance, for an interval or if a certification is required from an eligible person before a payment may be made, VA will apply the provisions of § 21.4138.

(Authority: 38 U.S.C. 3680)

(b) *Payee.* (1) VA will pay an educational assistance allowance to the eligible person if he or she has attained majority and has no known legal disability.

(2) If an eligible person has not attained majority, VA will pay an educational assistance allowance directly to an eligible person, a relative, or some other person for the use and benefit of the eligible person notwithstanding a legal disability on the part of the eligible person when VA determines:

(i) The best interest of the eligible person would be served;

(ii) Undue delay in payment would be avoided; or

(iii) Payment would otherwise not be feasible.

(Authority: 38 U.S.C. 3501(a)(4), 3501(c), 3531(a), 5502)

(c) *Payment of accrued benefits.* Educational assistance remaining due and unpaid at the date of the eligible person's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

(d) *Tutorial assistance.* An individual who is otherwise eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3492, 3533(b))

(e) *Offsets: 38 U.S.C. chapter 35, compensation, pension and dependency and indemnity compensation.* Payment of dependents' educational assistance will be subject to offset of amounts of pension, compensation or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.

(Authority: 38 U.S.C. 3562)

(f) *Final payment.* VA may withhold final payment until VA receives proof of continued enrollment and adjusts the eligible person's account.

(Authority: 38 U.S.C. 3680)

[61 FR 26111, May 24, 1996]

### § 21.3135 Reduction or discontinuance dates for awards of educational assistance allowance.

The reduction or discontinuance date of an award of educational assistance will be as stated in this section. If more than one basis for reduction or discontinuance is involved, the earliest date will control.

(a) *Ending date of course.* Educational assistance allowance will be discontinued on the ending date of the course or period of enrollment as certified by the school.

(Authority: 38 U.S.C. 3531, 3680(a))

(b) *Ending date of eligibility.* Educational assistance allowance will be discontinued on the ending date of the eligible person's eligibility as determined by § 21.3041, § 21.3042, § 21.3043, or § 21.3046.

(Authority: 38 U.S.C. 3512)

(c) *General reduction or discontinuance dates.* Educational assistance allowance will be reduced or discontinued on the date specified in § 21.4135.

(Authority: 38 U.S.C. 3482(g), 3531, 3671(g), 3672(a), 3680, 3683, 3690, 5112, 5113, 6103, 6104, 6105)

(d) *Divorce.* If the veteran and eligible spouse divorce, the discontinuance date for the eligible spouse's award of educational assistance will be:

(1) The end of the quarter or semester if the school is operated on a quarter or semester system, and the divorce was without fault on the eligible spouse's part;

(2) The end of the course or a 12-week period, whichever is earlier, if the school does not operate on a quarter or semester system, and the divorce was

without fault on the eligible spouse's part; or

(3) In all other instances, the date the divorce decree becomes final.

(Authority: 38 U.S.C. 3501(a)(1)(D), 3511(b))

(e) *Remarriage or other relationship of spouse or surviving spouse.* (1) If an eligible surviving spouse remarries, the date of discontinuance of his or her award of educational assistance allowance will be the last date of attendance before remarriage.

(2) If a spouse or surviving spouse begins a relationship by living with another person and holding himself or herself out openly to the public to be the spouse of the other person, the date of discontinuance of his or her award of educational assistance allowance will be the last date of the month before the spouse's or surviving spouse's relationship began.

(Authority: 38 U.S.C. 101(3), 3501(a)(1)(B))

(f) *Entrance on active duty (§21.3042).* If an eligible person enters on active duty, VA will terminate his or her educational assistance allowance on the day before the day of entrance on active duty. Brief periods of active duty for training, if the school permits such an absence without interruption of training, will not result in termination of the allowance under this paragraph.

(Authority: 38 U.S.C. 3501(d))

(g) *Eligible stepchild ceases to be a stepchild or stepchild ceases to be a member of the veteran's household.* (1) If the child ceases to be the veteran's stepchild because the veteran and the stepchild's natural or adoptive parent divorce, the eligibility ending date is as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's period of eligibility is the date on which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is training in a school organized on a term, semester, or quarter basis, the ending date of the child's eligibility is the last day of the term, semester, or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is training in a school not organized on a term, semester, or quarter basis, the ending date of the child's eligibility is the end of the course, or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier.

(2) If the stepchild ceases to be a member of the veteran's household, he or she is no longer eligible. For purposes of this paragraph, VA considers a stepchild a member of the veteran's household even when the stepchild is temporarily not living with the veteran, so long as the actions and intentions of the stepchild and veteran establish that normal family ties have been maintained during the temporary absence. VA will determine the stepchild's eligibility ending date as follows:

(i) If the stepchild ceases to be a member of the veteran's household while the stepchild is not in training, the eligibility ending date is the date on which the stepchild ceases to be a member of the veteran's household.

(ii) If the stepchild ceases to be a member of the veteran's household while the stepchild is training in a school organized on a term, semester, or quarter basis, the ending date of the stepchild's eligibility is the last day of the term, semester, or quarter during which the stepchild ceases to be a member of the veteran's household.

(iii) If the stepchild ceases to be a member of the veteran's household while the stepchild is training in a school not organized on a term, semester, or quarter basis, the ending date of the stepchild's eligibility is the end of the course, or 12 weeks from the date on which the stepchild ceases to be a member of the veteran's household. See §21.3041(f).

(Authority: 38 U.S C. 101(4)(a), 3501)

(h) *Veteran no longer rated permanently and totally disabled.* (1) If the veteran on whose service an eligible person's eligibility is based is no longer permanently and totally disabled, VA will discontinue the educational assistance allowance—

(i) On the last date of the quarter or semester during which VA rated the

veteran as no longer permanently and totally disabled if the eligible person's educational institution is organized on a quarter or semester basis; or

(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:

(A) The last date of the course;

(B) The end of a 12-week period beginning on the date VA rated the veteran as being no longer permanently and totally disabled.

(Authority: 38 U.S.C. 3511(b), 3512(a)(6)(A))

(i) Serviceperson is removed from ''missing status'' listing. (1) If the serviceperson on whose service an eligible person's eligibility is based is removed from the ''missing status'' listing, VA will discontinue the educational assistance allowance—

(i) On the last date of the quarter or semester during which the serviceperson was removed from the ''missing status'' listing if the eligible person's educational institution is organized on a quarter or semester basis; or

(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:

(A) The last date of the course;

(B) The end of a 12-week period beginning on the date the serviceperson was removed from the ''missing status'' listing.

(Authority: 38 U.S.C. 3512(a)(6)(A))

(j) *Fugitive felons.* (1) VA will not award educational assistance allowance to an otherwise eligible person for any period after December 26, 2001, during which the—

(i) Eligible person is a fugitive felon; or

(ii) Veteran from whom eligibility is derived is a fugitive felon.

(2) The date of discontinuance of an award of educational assistance allowance to an eligible person is the later of—

(i) The date of the warrant for the arrest of the felon; or

(ii) December 27, 2001.

(Authority: 38 U.S.C. 5313B)

[61 FR 26111, May 24, 1996, as amended at 70 FR 25786, May 16, 2005; 73 FR 30491, May 28, 2008]

SPECIAL RESTORATIVE TRAINING

## § 21.3300 Special restorative training.

(a) *Purpose of special restorative training.* The Department of Veterans Affairs may prescribe special restorative training where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible person to pursue a program of education, special vocational program or other appropriate goal. Medical care and treatment or psychiatric treatment are not included.

(Authority: 38 U.S.C. 3540 through 3543)

(b) *Eligible persons.* VA may prescribe special restorative training for an eligible person who is a child, spouse, or surviving spouse except for a spouse whose qualification as an eligible person is under § 21.3021(a)(3)(ii). The special restorative training must begin after December 26, 2001, for a spouse or surviving spouse.

(Authority: 38 U.S.C. 3501, 3540, 3541, 3543; sec. 109, Pub. L. 107–103, 115 Stat. 986)

(c) *Special restorative training courses.* The counseling psychologist or vocational rehabilitation counselor, after consulting with the Vocational Rehabilitation Panel, may prescribe for special restorative training purposes courses such as—

(1) Speech and voice correction or retention,

(2) Language retraining,

(3) Speech (lip) reading,

(4) Auditory training,

(5) Braille reading and writing,

(6) Training in ambulation,

(7) One-hand typewriting,

(8) Nondominant handwriting,

(9) Personal, social and work adjustment training,

(10) Remedial reading, and

(11) Courses at special schools for mentally and physically disabled or

(12) Courses provided at facilities which are adapted or modified to meet special needs of disabled students.

(Authority: 38 U.S.C. 3540, 3541, 3543)

(d) *Duration of special restorative training*. VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of—

(1) $247.00 a month for the period beginning July 1, 2004, and ending September 30, 2004;

(2) $251.00 a month for the period beginning October 1, 2004, and ending September 30, 2005;

(3) $258.00 a month for the period beginning October 1, 2005, and ending September 30, 2006;

(4) $268.00 a month for the period beginning October 1, 2006, and ending September 30, 2007;

(5) $274.00 a month for the period beginning October 1, 2007, and ending September 30, 2008; and

(6) $284.00 a month for months after September 30, 2008.

(Authority: 38 U.S.C. 3541(b), 3542)

(e) *Special restorative training precluded in Department of Veterans Affairs facilities*. Special restorative training will not be provided in Department of Veterans Affairs facilities.

(Authority: 38 U.S.C. 3543(b))

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42725, Oct. 24, 1984; 50 FR 19934, May 13, 1985; 63 FR 67779, Dec. 9, 1998; 66 FR 32228, June 14, 2001; 68 FR 34322, June 9, 2003; 69 FR 62208, Oct. 25, 2004; 73 FR 2424, Jan. 15, 2008; 73 FR 79650, Dec. 30, 2008]

## § 21.3301 Need.

(a) *Determination of need*. When special restorative training has been requested or is being considered for an eligible person with a disability who is a child, spouse, or surviving spouse, a counseling psychologist or vocational rehabilitation counselor will obtain all information necessary to determine the need for and feasibility of special restorative training. After the counseling psychologist or vocational rehabilitation counselor completes this task, he or she will refer the case to the Vocational Rehabilitation Panel. The panel will consider whether—

(1) There exists a handicap which will interfere with pursuit of a program of education;

(2) The period of special restorative training materially will improve the child's, spouse's, or surviving spouse's ability to:

(i) Pursue a program of education,

(ii) Pursue a program of specialized vocational training,

(iii) Obtain continuing employment in a sheltered workshop, or

(iv) Adjust in his or her family or community;

(3) The special restorative training may be pursued concurrently with a program of education;

(4) Training will affect adversely the child's, spouse's, or surviving spouse's mental or physical condition;

(5) In the case of a child, whether it is in the best interest of the child to begin special restorative training after his or her 14th birthday; and

(6) The Department of Veterans Affairs:

(i) Has considered assistance available under provisions of State-Federal programs for education of individuals with disabilities; and

(ii) Has determined that it is in the eligible person's interest to receive benefits under 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3501, 3540, 3541(a), 3543)

(b) *Report*. The Vocational Rehabilitation Panel will prepare a written report of its findings and recommendations as to the need for assistance and the types of assistance which should be provided. The report will be sent to the counseling psychologist or vocational rehabilitation counselor.

(c) *Development and implementation*. Following consultation with the panel and receipt of the panel's report, the counseling psychologist or vocational rehabilitation counselor will determine the need for and feasibility of special restorative training. If this determination is affirmative, the counseling psychologist or vocational rehabilitation counselor will prepare an individualized written plan comparable to a plan

for an extended evaluation under 38 U.S.C. chapter 31. In the case of an eligible person who is a spouse or surviving spouse, or a child who has attained majority under laws applicable in his or her State of residence, the plan will be developed jointly with the spouse or surviving spouse, or the child, respectively. In the case of an eligible person who has a guardian or has not attained majority under laws applicable in his or her State of residence, the plan will be developed jointly with the eligible person and his or her parent or guardian (see § 21.3021(d)).

(Authority: 38 U.S.C. 3501, 3541(a))

(d) *Notification of disallowance.* When an eligible person, or a parent or guardian on behalf of an eligible person, has requested special restorative training, and the counseling psychologist or vocational rehabilitation counselor finds that this training is not needed or will not materially improve the eligible person's condition, VA will inform the eligible person, except that VA will inform his or her parent or guardian (see § 21.3021(d)) if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, in writing of the finding and of his or her appeal rights.

(Authority: 38 U.S.C. 3501, 3540, 3543, 5104)

(e) *Reentrance after interruption.* The case of an eligible person shall be referred to the panel for consideration of whether the eligible person may be permitted reentrance into special restorative training following interruption. The panel will recommend approval to the counseling psychologist if there is a reasonable expectation that the purpose of special restorative training will be accomplished. See § 21.3306.

(Authority: 38 U.S.C. 3501, 3540, 3543)

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42725, Oct. 24, 1984; 73 FR 2424, Jan. 15, 2008]

### § 21.3302 Special restorative training agreements and reports.

(a) *Agreements to provide training.* The Department of Veterans Affairs may make agreements with public or private educational institutions or others to provide suitable and necessary special restorative training for an eligible person.

(b) *Tuition charge.* When a customary tuition charge is not applicable, the agreement will include the fair and reasonable amounts charged for the training provided to the eligible person.

(c) *Reports.* Each educational institution or other provider of a course of special restorative training must report promptly the eligible person's enrollment in, interruption of, or termination of the course of special restorative training.

(Authority: 38 U.S.C. 501(a), 3543, 3680, 3684)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0014, 2900–0073, and 2900–0156)

[48 FR 37973, Aug. 22, 1983, as amended at 73 FR 2425, Jan. 15, 2008]

### § 21.3303 Extent of training.

(a) *Length of special restorative training.* Ordinarily, special restorative training may not exceed 12 months. When the counseling psychologist or vocational rehabilitation counselor, after consulting with the Vocational Rehabilitation Panel, determines that more than 12 months of training is necessary, he or she will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval. Where the plan for a program of special restorative training itself (not in combination with the program of education) will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to the Director, Vocational Rehabilitation and Employment Service for approval.

(Authority: 38 U.S.C. 3543(b))

(b) *Ending dates of eligibility.* (1) No child may receive special restorative training after reaching the end of his or her eligibility period as determined under § 21.3041.

(2) No spouse or surviving spouse may receive special restorative training after reaching the end of his or her

eligibility period as determined under §§ 21.3046 and 21.3047.

(Authority: 38 U.S.C. 3512)

(c) *Full-time training*. An eligible person will pursue special restorative training on a full-time basis.

(1) Full-time training requires training for:

(i) That amount of time per week which commonly is required for a full-time course at the educational institution when, based on medical findings, the Department of Veterans Affairs determines that the eligible person's physical or mental condition permits training for that amount of time, or

(ii) The maximum time per week permitted by the eligible person's disability, as determined by the Department of Veterans Affairs, based on medical findings, if the disability precludes the weekly training time stated in paragraph (c)(1)(i) of this section.

(2) If the hours per week that can reasonably be devoted to restorative training will not of themselves equal the time required by paragraph (c)(1) of this section, the course will be supplemented with subject matter which will contribute toward the objective of the program of education.

(Authority: 38 U.S.C. 3542, 3543)

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 73 FR 2425, Jan. 15, 2008]

### § 21.3304 Assistance during training.

(a) *General*. A counseling psychologist or vocational rehabilitation counselor will provide the professional and technical assistance needed by the eligible person in pursuing special restorative training. The assistance will be timely, sustained and personal.

(b) *Adjustments in the training situation*. The counseling psychologist or vocational rehabilitation counselor must be continually aware of the eligible person's progress. At frequent intervals he or she will determine whether the eligible person is progressing satisfactorily. When the counseling psychologist or vocational rehabilitation counselor determines that adjustments are needed in the course or in the training situation, he or she will act immediately to bring about the adjustments in accordance with the following:

(1) When the eligible person or his or her instructor indicates dissatisfaction with elements of the program, the counseling psychologist or vocational rehabilitation counselor, through personal discussion with the eligible person or his or her instructor or both, will, if possible, correct the difficulty through such means as making minor adjustments in the course or by persuading the eligible person to give more attention to performance.

(2) When major difficulties cannot be corrected, the counseling psychologist or vocational rehabilitation counselor will prepare a report of pertinent facts and recommendations for action in consultation with the Vocational Rehabilitation Panel.

(3) Action will be taken to terminate the eligible person's course at the proper time so that his or her entitlement may be conserved when the counseling psychologist or vocational rehabilitation counselor determines that:

(i) The eligible person is progressing much faster than anticipated, and

(ii) The eligible person's course may be terminated with satisfactory results before the time originally planned.

(Authority: 38 U.S.C. 3520, 3541, 3543, 3561)

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 73 FR 2425, Jan. 15, 2008]

### § 21.3305 "Interrupted" status.

(a) *Special restorative training should be uninterrupted*. An eligible person once entered into special restorative training should pursue his or her course to completion without interruption. Wherever possible, continuous training shall be provided for each eligible person, including training during the summer, except where, because of his or her physical condition or other good reason, it would not be to his or her best interest to pursue training. As long as the eligible person is progressing satisfactorily toward overcoming the effects of his or her disability(ies), the eligible person will be

continued in his or her course of training without accounting for days of nonattendance within the authorized enrollment.

(Authority: 38 U.S.C. 3541)

(b) *Interrupting special restorative training*. Special restorative training will be interrupted as necessary under the following conditions:

(1) During summer vacations or periods when no instruction is given before and after summer sessions.

(2) During a prolonged period of illness or medical infeasibility.

(3) When the eligible person voluntarily abandons special restorative training.

(4) When the eligible person fails to make satisfactory progress in the special restorative training course.

(5) When the eligible person is no longer acceptable to the institution because of failure to maintain satisfactory conduct or progress in accordance with the rules of the institution.

(6) When the eligible person's progress is materially retarded because of his or her negligence, lack of application or misconduct.

(Authority: 38 U.S.C. 3541, 3543(b))

[48 FR 37973, Aug. 22, 1983, as amended at 73 FR 2425, Jan. 15, 2008]

### § 21.3306 Reentrance after interruption.

When a course of special restorative training has been interrupted and the eligible person presents himself or herself for reentrance, the Department of Veterans Affairs will act as follows:

(a) *Reentrance without corrective action*. A counseling psychologist or vocational rehabilitation counselor will approve reentrance when special restorative training was interrupted:

(1) For a scheduled vacation period, such as a summer break,

(2) For a short period of illness, or

(3) For other reasons which permit reentrance in the same course of special restorative training without corrective action.

(Authority: 38 U.S.C. 3543(b))

(b) *Consultation with Vocational Rehabilitation Panel*. (1) A counseling psychologist or vocational rehabilitation counselor will consult with the Vocational Rehabilitation Panel when special restorative training was interrupted—

(i) By reason of failure to maintain satisfactory conduct or progress, or

(ii) For any other reason, which requires corrective action, such as changes of place of training, change of course, personal adjustment, etc.

(2) If the counseling psychologist or vocational rehabilitation counselor determines that the conditions which caused the interruption can be overcome, he or she will approve the necessary adjustment.

(3) The counseling psychologist or vocational rehabilitation counselor will make a finding of infeasibility if—

(i) All efforts to effect proper adjustment in the case have failed; and

(ii) There is substantial evidence, resolving any reasonable doubt in favor of the eligible person (as discussed in § 3.102 of this chapter), that additional efforts will be unsuccessful.

(Authority: 38 U.S.C. 3541, 3543(b))

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 73 FR 2425, Jan. 15, 2008]

### § 21.3307 "Discontinued" status.

(a) *Placement in ''discontinued'' status*. If reentrance from *interrupted* status into a program of special restorative training is not approved under the provisions of § 21.3306, a counseling psychologist or vocational rehabilitation counselor will place the case in *discontinued* status.

(b) *Notification*. In any case of discontinuance the Department of Veterans Affairs will:

(1) Notify the eligible person of the action taken, except that if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, VA will notify his or her parent or guardian (see § 21.3021(d)) of the action taken.

(2) Inform the eligible person of his or her potential right to a program of education, except that if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, VA will inform his or her parent or guardian (see § 21.3021(d)) of the eligible person's

potential right to a program of education.

(Authority: 38 U.S.C. 3501, 3543(b))

(c) *Effect of discontinuance.* An eligible person who has been placed in *discontinued* status is precluded from any further pursuit of special restorative training until a Department of Veterans Affairs counseling psychologist or vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division determines that the cause of the discontinuance has been removed.

(Authority: 38 U.S.C. 3543(b))

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 73 FR 2426, Jan. 15, 2008]

PAYMENTS; SPECIAL RESTORATIVE TRAINING

**§ 21.3330 Payments.**

(a) Payments will be made to the person designated to receive the payments under the provisions of § 21.3133(b).

(b) VA will pay special training allowance only for the period of the eligible person's approved enrollment as certified by the counseling psychologist or vocational rehabilitation counselor. In no event, however, will VA pay such allowance for any period during which:

(1) The eligible person is not pursuing the prescribed course of special restorative training that has been determined to be full-time training with respect to his or her capacities; or

(2) An educational assistance allowance is paid.

(Authority: 38 U.S.C. 3542)

(c) The provisions of § 21.3133(e) apply to the payment of special restorative training allowance.

(Authority: 38 U.S.C. 3562)

[30 FR 15646, Dec. 18, 1965, as amended at 31 FR 6774, May 6, 1966; 50 FR 21606, May 28, 1985; 61 FR 26112, May 24, 1996; 73 FR 2426, Jan. 15, 2008]

**§ 21.3331 Commencing date.**

The commencing date of an authorization of a special training allowance will be the date of entrance or reentrance into the prescribed course of special restorative training, or the date the counseling psychologist or vocational rehabilitation counselor approved the course for the eligible person whichever is later. See also § 21.4131.

(Authority: 38 U.S.C. 3542)

[49 FR 42726, Oct. 24, 1984, as amended at 61 FR 26112, May 24, 1996; 73 FR 2426, Jan. 15, 2008]

**§ 21.3332 Discontinuance dates.**

VA will discontinue special training allowance as provided in this section on the earliest date of the following:

(a) The ending date of the course.

(b) The ending date of the period of enrollment as certified by the counseling psychologist or vocational rehabilitation counselor.

(c) The ending date of the period of eligibility.

(d) The expiration of the eligible person's entitlement.

(e) Date of interruption of course as determined by the counseling psychologist or vocational rehabilitation counselor under § 21.3305.

(f) Date of discontinuance under the applicable provisions of § 21.4135.

(Authority: 38 U.S.C. 3543(b))

[50 FR 21606, May 28, 1985, as amended at 61 FR 26112, May 24, 1996; 73 FR 2426, Jan. 15, 2008]

**§ 21.3333 Rates.**

(a) *Rates.* Special training allowance is payable at the following monthly rates, except as provided in paragraph (c) of this section.

(1) For special restorative training pursued after June 30, 2004, and before October 1, 2004:

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training | $788.00 | If costs for tuition and fees average in excess of $247.00 per month, rate may be increased by such amount in excess of $247.00. |

(Authority: 38 U.S.C. 3542)

(2) For special restorative training pursued after September 30, 2004, and before October 1, 2005:

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training | $803.00 | If costs for tuition and fees average in excess of $251.00 per month, rate may be increased by such amount in excess of $251.00. |

(Authority: 38 U.S.C. 3542)

(3) For special restorative training pursued after September 30, 2005, and before October 1, 2006:

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training | $827.00 | If costs for tuition and fees average in excess of $258.00 per month, rate may be increased by such amount in excess of $258.00. |

(Authority: 38 U.S.C. 3542)

(4) For special restorative training pursued after September 30, 2006, and before October 1, 2007:

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training | $860.00 | If costs for tuition and fees average in excess of $268.00 per month, rate may be increased by such amount in excess of $268.00. |

(Authority: 38 U.S.C. 3542)

(5) For special restorative training pursued after September 30, 2007, and before October 1, 2008:

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training | $881.00 | If costs for tuition and fees average in excess of $274.00 per month, rate may be increased by such amount in excess of $274.00. |

(Authority: 38 U.S.C. 3542)

(6) For special restorative training pursued after September 30, 2008:

| Course | Monthly rate | Accelerated charges |
|---|---|---|
| Special restorative training | $915.00 | If costs for tuition and fees average in excess of $284.00 per month, rate may be increased by such amount in excess of $284.00. |

(Authority: 38 U.S.C. 3542)

(b) *Accelerated charges.* (1) VA may pay the additional monthly rate if the eligible person, or his or her parent or guardian (see §21.3021(d)) if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, concurs in having his or her period of entitlement reduced by 1 day for each—

(i) $26.27 that the special training allowance exceeds the basic monthly rate of $803.00 for the period July 1, 2004, through September 30, 2004;

(ii) $26.77 that the special training allowance exceeds the basic monthly rate of $803.00 for the period October 1, 2004, through September 30, 2005;

(iii) $27.57 that the special training allowance exceeds the basic monthly rate of $827.00 for the period October 1, 2005, through September 30, 2006;

(iv) $28.67 that the special training allowance exceeds the basic monthly rate of $860.00 for the period October 1, 2006, through September 30, 2007;

(v) $29.37 that the special restorative training allowance exceeds the basic monthly rate of $881.00 for the period October 1, 2007, through September 30, 2008; and

(vi) $30.50 that the special restorative training allowance exceeds the basic monthly rate of $915.00 for months after September 30, 2008.

(2) VA will:

(i) Charge fractions of more than one-half day as 1 day;

(ii) Disregard fractions of one-half or less; and

(iii) Record charges when the eligible child is entered into training.

(Authority: 38 U.S.C. 3542)

(c) *Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos.* When the eligible person is pursuing training at an institution located in the Republic of the Philippines or when an eligible child's entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in §3.40(b), (c), or (d) of this chapter, payments of special training allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.

(Authority: 38 U.S.C. 3532(d), 3542, 3565)

[35 FR 9814, June 16, 1970, as amended at 48 FR 37975, Aug. 22, 1983; 50 FR 19934, May 13, 1985; 57 FR 29799, July 7, 1992; 61 FR 29295, June 10, 1996; 63 FR 67779, Dec. 9, 1998; 66 FR 32228, June 14, 2001; 68 FR 34322, June 9, 2003; 68 FR 37206, June 23, 2003; 69 FR 62209, Oct. 25, 2004; 73 FR 2426, Jan. 15, 2008; 73 FR 79651, Dec. 30, 2008; 74 FR 3436, Jan. 21, 2009]

SPECIAL ASSISTANCE AND TRAINING

### §21.3344 Special assistance for the educationally disadvantaged.

(a) *Enrollment.* VA may approve the enrollment of an eligible person in an appropriate course or courses at the secondary school level. This approval may be made only if the eligible person—

(1) Has not received a secondary school diploma (or an equivalency certificate);

(2) Needs additional secondary school education, remedial, refresher, or deficiency courses, to qualify for admission to an appropriate educational institution in a State in order to pursue a program of education; and

(3) Is to pursue the course or courses in a State.

(Authority: 38 U.S.C. 3491(a), 3533)

(b) *Measurement.* VA will measure remedial, deficiency, or refresher courses offered at the secondary school level as provided in §§21.4270(a)(2) and 21.4272(k).

(Authority: 38 U.S.C. 3533)

(c) *Educational assistance.* VA will authorize educational assistance at the monthly rates specified in § 21.3131.

(Authority: 38 U.S.C. 3491(a), 3533)

(d) *Entitlement charge.* The provisions of § 21.3045 will determine whether VA will make a charge against the period of the entitlement of the eligible person because of enrollment in a course under the provisions of this section.

(Authority: 38 U.S.C. 3533)

(e) *Certifications.* (1) Certifications of the eligible person's need for deficiency or remedial courses in basic English language skills and mathematics skills may be made by:

(i) A VA counseling psychologist or vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division;

(ii) The educational institution administering the course; or

(iii) The educational institution where the student has applied for admission.

(2) Certification of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Administering the course which the eligible person is planning to enter; or

(ii) Where the eligible person has applied for admission.

(Authority: 38 U.S.C. 3533)

(f) *Basic skills.* Basic English language courses or mathematics courses will be authorized when it is found by accepted testing methods that the eligible person is lacking in basic reading, writing, speaking, or essential mathematics.

(Authority: 38 U.S.C. 3533)

[61 FR 26112, May 24, 1996, as amended at 73 FR 2426, Jan. 15, 2008]

## Subpart D—Administration of Educational Assistance Programs

AUTHORITY: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

SOURCE: 31 FR 6774, May 6, 1966, unless otherwise noted.

ADMINISTRATIVE

### § 21.4001 Delegations of authority.

(a) Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Education Service, designated by him or her to make findings and decisions under 38 U.S.C. Chapters 34 and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.

(b) Authority is delegated to the Under Secretary for Benefits and the Director, Education Service, to enter into agreements for the reimbursement of State approving agencies under § 21.4153.

(Authority: 38 U.S.C. 512(a))

(c) Authority is delegated to the Director, Education Service, to exercise the functions required of the Secretary for:

(1) Waiver of penalties for conflicting interests as provided by § 21.4005;

(2) Actions otherwise required of State approving agencies under § 21.4150(c);

(3) Approval of courses under § 21.4250(c)(2).

(Authority: 38 U.S.C. 512(c))

(d) The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education and special restorative training to implement Title VI, Civil Rights Act of 1964. Authority is delegated to him or her and his or her designee to take any necessary action as to programs of vocational rehabilitation, education or special restorative training under 38 U.S.C. Chapters 31, 34, 35 and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Secretary has delegated responsibility for various schools or training establishments to implement §§ 18.1 through 18.13 of this chapter.

(e) The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations

whose representatives are afforded space and office facilities in facilities under his or her jurisdiction.

(f) The Under Secretary for Benefits is delegated responsibility to enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, consistent with its available resources, to carry out investigations and make determinations as to enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.

(Authority: 38 U.S.C. 3696)

(g) Authority is delegated to the Director, Vocational Rehabilitation and Employment Service to exercise the functions required of the Secretary for approval of courses under §21.4250(c)(1).

(Authority: 38 U.S.C. 512(a))

[31 FR 6774, May 6, 1966, as amended at 40 FR 31759, July 29, 1975; 48 FR 37975, Aug. 22, 1983; 50 FR 46764, Nov. 13, 1985; 61 FR 26112, May 24, 1996]

**§21.4002 Finality of decisions.**

(a) The decision of a duly constituted agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Department of Veterans Affairs as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §21.4003. (See §§19.192 and 19.183 of this chapter.)

(b) Current determinations of line of duty, character of discharge, relationship, and other pertinent elements of eligibility for a program of education or special restorative training, made by either an adjudicative activity or an insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

[31 FR 6774, May 6, 1966, as amended at 48 FR 37976, Aug. 22, 1983]

**§21.4003 Revision of decisions.**

The revision of a decision on which an action was predicated will be subject to the following sections:

(a) Clear and unmistakable error, §3.105(a) of this chapter;

(b) Difference of opinion, §3.105(b) of this chapter;

(c) Character of discharge, §3.105(c) of this chapter;

(d) Severance of service connection, §3.105(d) of this chapter;

(e) Veteran no longer totally and permanently disabled, §21.4135(o).

**§21.4005 Conflicting interests.**

For the purposes of this section, a person will be considered to be an ''officer'' of the State approving agency or VA when he or she has authority to exercise supervisory authority, and ''educational institution'' includes an organization or entity offering licensing or certification tests.

(Authority: 38 U.S.C. 3683, 3689)

(a) *A conflict of interest can cause the dismissal of a VA or State approving agency officer or employee and other adverse consequences.* (1) An officer or employee of VA will be immediately dismissed from his or her office or employment, if while such an officer or employee he or she has owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from any educational institution operated for profit—

(i) In which a veteran or eligible person was pursuing a course of education under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36; or

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(2) Except as provided in paragraph (a)(3) or (c) of this section, VA will discontinue payments under §21.4153 to a State approving agency when the Secretary finds that any individual who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or

services from any educational institution operated for profit—

(i) In which a veteran or eligible person was pursuing a course of education or training under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36; or

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(3) VA will not discontinue payments to a State approving agency under paragraph (a)(2) of this section if the State approving agency, after learning that it has any officer or employee described in that paragraph, acts without delay to end the employment of that individual.

(4) If VA discontinues payments to a State approving agency pursuant to paragraph (a)(2) of this section, VA will not resume these payments while such an individual is an officer or employee of the:

(i) State approving agency;

(ii) State Department of Veterans Affairs; or

(iii) State Department of Education.

(5) A State approving agency will not approve any course offered by an educational institution operated for profit and, if any such course has been approved, will disapprove each such course, if it finds that any officer or employee of the Department of Veterans Affairs, or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or service from, such educational institution.

(6) If a State approving agency finds that any officer or employee of VA or of the State approving agency owns an interest in, or receives wages, salary, dividends, profits, gratuities, or services from an organization or entity, operated for profit, that offers licensing or certification tests, the State approving agency:

(i) Will not approve any licensing or certification test that organization or entity offers; and

(ii) Will withdraw approval of any licensing or certification test that organization or entity offers.

(7) The Secretary may, after reasonable notice, and public hearings if requested, waive in writing the application of this paragraph in the case of any officer or employee of the Department of Veterans Affairs or of a State approving agency, if it is found that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(b) *Waiver*. (1) Where a request is made for waiver of application of paragraph (a)(1) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of the Department of Veterans Affairs, if the officer or employee:

(i) Acquired his or her interest in the educational institution by operation of law, or before the statute became applicable to the officer or employee, and his or her interest has been disposed of and his or her connection discontinued, or

(ii) Meets all of the following conditions:

(A) His or her position involves no policy determinations, at any administrative level, having to do with matters pertaining to payment of educational assistance allowance, or special training allowance.

(B) His or her position has no relationship with the processing of any veteran's or eligible person's application for education or training.

(C) His or her position precludes him or her from taking any adjudicative action on individual applications for education or training.

(D) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of educational institutions or veterans or eligible persons in connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 33, 35 or 36.

(E) His or her position is not connected with the processing of claims by, or payments to, schools, or their students enrolled under the provisions

of 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 33, 35 or 36.

(F) His or her position is not connected in any way with the inspection, approval, or supervision of educational institutions desiring to train veterans or eligible persons or to offer a licensing or certification test; or with the processing of claims by or making payments to veterans and eligible persons for taking an approved licensing or certification test.

(2) Where a request is made for waiver of application of paragraph (a) (2) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of a State approving agency, if the officer or employee:

(i) Acquired his or her interest in the educational institution by operation of law, or before the statute became applicable to the officer or employee, and his or her interest has been disposed of and his or her connection discontinued, or

(ii) Meets all of the following conditions:

(A) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of educational institutions or veterans or eligible persons in connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 33, 35 or 36.

(B) His or her work is not connected in any way with the inspection, approval, or supervision of educational institutions desiring to train veterans or eligible persons, or desiring to offer licensing or certification tests to veterans or elegible persons.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(c) *Authority*. (1) Authority is delegated to the Director, Education Service, and to the facility head in the cases of VA employees under his or her jurisdiction, to waive the application of paragraph (a)(1) of this section in the case of any VA employee who meets the criteria of paragraph (b)(1) of this section, and to deny requests for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Secretary for a decision.

(2) Authority is delegated to the Director, Education Service, in cases of State approving agency employees to waive the application of paragraph (a)(2) of this section in the case of anyone who meets the criteria of paragraph (b)(2) of this section, and to deny requests for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Secretary for a decision.

(3) Authority is reserved to the Secretary to waive the requirement of paragraphs (a) (1) and (2) of this section in the case of an officer of the Department of Veterans Affairs or a State approving agency and in the case of any employee of either who does not meet the criteria of paragraph (b) of this section.

(Authority: 38 U.S.C. 512(a), 3683)

(d) *Notice when VA does not grant a requested waiver*. When VA has denied a request for waiver of application of paragraph (a)(1) or (a)(2) of this section, VA will immediately notify the State approving agency and the educational institution:

(1) That the approval of courses or licensing and certification tests offered by the educational institution must be withdrawn;

(2) The reasons for the withdrawal of approval; and

(3) The conditions that will permit the courses or such tests to be approved again.

(Authority: 38 U.S.C. 3683, 3689(d))

(e) *Notice to veterans, reservists, and eligible individuals*. (1) The veteran or eligible person will be notified in writing sent to his or her latest address of record when, in circumstances involving a finding of conflicting interests:

(i) The course or courses are disapproved by the State approving agency, or

(ii) The State approving agency fails to disapprove the course or courses within 15 days after the date of written notice to the agency, and no waiver has been requested, or

(iii) Waiver has been denied.

(2) The veteran or eligible person will be informed that he or she may apply

for enrollment in an approved course in another educational institution, but that in the absence of such transfer, educational assistance allowance payments will be discontinued effective the date of discontinuance of the course, or the 30th day following the date of such letter, whichever is earlier.

(Authority: 38 U.S.C. 3683, 3690, 5104)

[31 FR 6774, May 6, 1966, as amended at 43 FR 3707, Jan. 27, 1978; 51 FR 16315, May 2, 1986; 61 FR 20728, May 8, 1996; 72 FR 16967, Apr. 5, 2007; 74 FR 14666, Mar. 31, 2009]

### § 21.4006 False or misleading statements.

(a) *Payments may not be based on false statements.* Except as provided in this section payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States.

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

(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.

(2) When the Department of Veterans Affairs discovers that a certification or claim is false after it has released payment, the Department of Veterans Affairs will establish an overpayment for only that portion of the claim to which the claimant was not entitled.

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

(b) *Effect of false statements on subsequent payments.* A claimant's false or misleading statements are not a bar to payments based on further training.

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

(c) *Forfeiture.* The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of § 21.4007.

(Authority: 38 U.S.C. 6103)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14932, June 7, 1973; 48 FR 37976, Aug. 22, 1983; 74 FR 14666, Mar. 31, 2009]

### § 21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.

(Authority: 38 U.S.C. 6103, 6104 and 6105)

[54 FR 4286, Jan. 30, 1989]

### § 21.4008 Prevention of overpayments.

(a) *Prevention of overpayments to veterans and eligible persons enrolled in educational institutions.* When approval of a course may be withdrawn, and overpayments may exist or may be created, VA may suspend further payments to veterans and eligible persons enrolled in the educational institution offering the course until the question of withdrawing approval is resolved. See § 21.4210.

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

(b) *Prevention of overpayments to veterans and eligible persons taking licensing and certification tests.* When approval of a licensing or certification test may be withdrawn, and overpayments may exist or may be created, VA may suspend payments to veterans and eligible persons taking that test until the question of withdrawing approval is resolved. See § 21.4210.

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

[72 FR 16968, Apr. 5, 2007, as amended at 74 FR 14666, Mar. 31, 2009]

### § 21.4009 Waiver or recovery of overpayments.

For the purposes of this section, ''educational institution'' includes an

organization or entity offering licensing or certification tests.

(a) *General*. (1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Department of Veterans Affairs determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by §§21.4203 and 21.4204, discontinuance or interruption of a course by a veteran, reservist or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Department of Veterans Affairs may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Department of Veterans Affairs may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Department of Veterans Affairs determines the false certification or misrepresentation resulted from an administrative error or a misstatement of fact and that no criminal or civil action is warranted.

(4) If the Department of Veterans Affairs recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Department of Veterans Affairs subsequently collects the overpayment from a veteran or eligible person. The reimbursement—

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and interest) exceeds the total amount for which the educational institution is liable, and

(ii) Will be equal to the excess.

(5) This paragraph does not preclude the imposition of any civil or criminal liability under this or any other law.

(b) *Reporting*. (1) If a school is required to make periodic or other certifications, the Department of Veterans Affairs may consider the following in determining whether a school is potentially liable for an overpayment:

(i) The school's failure to report, or to report timely facts which resulted in an overpayment, or

(ii) The school's submission of an incorrect certification as to fact.

(2) In either instance the Department of Veterans Affairs will consider other pertinent factors such as:

(i) Allowing for occasional clerical error or occasional administrative error:

(ii) The school's past reliability in reporting;

(iii) The adequacy of the school's reporting system; and

(iv) The extent of noncompliance with reporting requirements.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685)

(c) *Committee on School Liability*. (1) Each VA Regional Processing Office shall have a Committee on School Liability. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines.

(2) The Secretary delegates to each Committee on School Liability, and to any panel that the chairperson of the Committee may designate and draw from the Committee, the authority to find whether an educational institution is liable for an overpayment.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(d) *Initial decision*. (1) The Education Officer of the VA Regional Processing Office of jurisdiction, or the Service Center Manager when the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction, will decide whether there is evidence that would warrant a finding that an educational institution is potentially liable for an overpayment.

(2) Following each finding of potential liability, the Finance Officer of the VA Regional Processing Office of jurisdiction will notify the educational institution in writing of VA's intent to apply the liability provisions of paragraph (a) of this section. The notice will—

(i) Identify the students who were overpaid;

(ii) Identify the veterans and eligible persons who took the licensing or certification test and were overpaid;

(iii) Set out in the case of each student, or in the case of each veteran or eligible person who took the test, the educational institution's actions or omissions which resulted in the finding that the educational institution was potentially liable for the overpayment; and

(iv) State that VA will determine liability on the basis of the evidence of record unless the VA Regional Processing Office of jurisdiction receives additional evidence or a request for a hearing within 30 days of the date the educational institution received the notice.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(e) *Hearings*. An educational institution is entitled to a hearing before a panel drawn from the Committee on School Liability before a decision is made as to whether it is liable for an overpayment. Every hearing will be preceded by a prehearing conference unless the conference is waived by the educational institution. The Committee on School Liability will consider all evidence and testimony presented at the hearing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(f) *Extent of liability*. Waiver of collection of an overpayment as to a veteran, reservist, or eligible person will not relieve the educational institution of liability for the overpayment. Recovery in whole or in part from the veteran, reservist, or eligible person will limit such liability accordingly. If an overpayment has been recovered from the educational institution and the veteran, reservist, or eligible person subsequently repays the amount in whole or in part, the amount repaid will be reimbursed to the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(g) *Notice to educational institution*. The educational institution shall be notified in writing of the decision of the Committee on School Liability. If the educational institution is found liable for an overpayment, the educational institution also will be notified of the right to appeal the decision to the Central Office School Liability Appeals Board within 60 days from the date of the letter to the educational institution containing notice of the decision. The 60-day time limit may be extended to 90 days at the discretion of the chairperson of the Committee on School Liability. The appeal must be in writing setting forth fully the alleged errors of fact and law. If an appeal is not received within the 60-day time limit, the Committee decision is final.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(h) *Appeals*. An appeal will be forwarded to Central Office where it will be considered by the School Liability Appeals Board. The Board's decision will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the Committee on School Liability in any case where the Board reverses a decision made by the Committee that the educational institution is liable.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(i) *Review*. Review by the School Liability Appeals Board is limited to the issues raised by the educational institution and shall be on the record and not de novo in character. The Board may affirm, modify or reverse a decision of the Committee on School Liability or may remand an appeal for further consideration by the appropriate Committee on School Liability. If new and material evidence is discovered while the School Liability Appeals Board is considering a case, the Board

may remand the case to the appropriate Committee on School Liability.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(j) *Finality of decisions*. The School Liability Appeals Board has authority to act for the Secretary in deciding appeals concerning an educational institution's liability for an overpayment. There is no right of additional administrative appeal of a decision of the School Liability Appeals Board.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

[32 FR 4533, Mar. 25, 1967, as amended at 44 FR 15492, Mar. 14, 1979; 48 FR 37976, Aug. 22, 1983; 49 FR 35630, Sept. 11, 1984; 51 FR 16316, May 2, 1986; 61 FR 20728, May 8, 1996; 61 FR 26112, May 24, 1996; 62 FR 55760, Oct. 28, 1997; 71 FR 28586, May 17, 2006; 72 FR 16968, Apr. 5, 2007; 74 FR 14666, Mar. 31, 2009]

GENERAL

### § 21.4020 Two or more programs.

(a) *Limit on training under two or more programs*. The aggregate period for which any person may receive assistance under two or more of the following laws may not exceed 48 months (or the part-time equivalent):

(1) Part VII or VIII, Veterans Regulations numbered 1(a), as amended:

(2) Title II of the Veterans' Readjustment Assistance Act of 1952;

(3) The War Orphans' Educational Assistance Act of 1956;

(4) 38 U.S.C. chapters 30, 32, 33, 34, 35, and 36;

(5) 10 U.S.C. chapters 106a, 1606, and 1607;

(6) Section 903 of the Department of Defense Authorization Act, 1981,

(7) The Hostage Relief Act of 1980, and

(8) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(a))

(b) *Limit on combining assistance received under Chapter 31 with assistance under another program*. No person may receive assistance under Chapter 31, Title 38 U.S.C. in combination with any provisions of law listed in paragraph (a) of this section in excess of 48 months (or the part-time equivalent) unless the Department of Veterans Affairs determines that additional months of benefits under Chapter 31 are necessary to accomplish the purpose of the veteran's rehabilitation program.

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(b))

[48 FR 37976, Aug. 22, 1983, as amended at 51 FR 16316, May 2, 1986; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996; 74 FR 14666, Mar. 31, 2009]

### § 21.4022 Nonduplication—programs administered by VA.

A veteran, reservist, or eligible individual, who is eligible for educational assistance allowance or subsistence allowance under more than one of the provisions of law listed in this section, whether based on his or her own service or the service of another person, cannot receive such benefits concurrently. The individual must choose under which program he or she will receive benefits for the particular period(s) during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(a) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(c) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. 33 (Post-9/11 GI Bill)

(e) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(f) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(g) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(h) 10 U.S.C. 106a (Educational Assistance Test Program);

(i) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(j) The Hostage Relief Act of 1980 (Pub. L. 96–449), 5 U.S.C. 5661 note);

(k) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

[74 FR 14666, Mar. 31, 2009]

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

**§ 21.4131 Commencing dates.**

VA will determine under this section the commencing date of an award or increased award of educational assistance provided pursuant to subpart C or G. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 32.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) *For other than licensing or certification tests.* (i) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(A) The date the educational institution certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(ii) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(A) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(B) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the veteran or servicemember is eligible for educational assistance under subpart G; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3672, 3689, 5110, 5113)

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter or semester in which the student is enrolled.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date the student reports to the school provided that—

(i) The published standards of the school require the student to register before reporting, and

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term,

quarter or semester for which the student has registered, and no later than the first scheduled date of classes for the term, quarter or semester for which the student has registered.

(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3481(a), 3680(a); Pub. L. 98–525)

(c) *Certification by school or establishment—course does not lead to a standard college degree.* (1) Residence school: See paragraph (b) of this section.

(2) Correspondence school: Date first lesson sent or date of affirmance whichever is later.

(3) Job training: First date of employment in training position.

(Authority: 38 U.S.C. 3481, 3687)

(d) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 35.* When a person eligible to receive educational assistance under 38 U.S.C. chapter 35 enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) *For other than licensing or certification tests.* (i) If the award is the first award of educational assistance for the program of education the eligible person is pursuing, the commencing date of the award of educational assistance is the latest of:

(A) The beginning date of eligibility as determined under §21.3041 or under §21.3046(a) or (b), whichever is applicable;

(B) One year before the date of claim as determined by §21.1029(b);

(C) The date the educational institution certifies under paragraph (b) or (c) of this section;

(D) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(ii) If the award is the second or subsequent award of educational assistance for that program, the effective date of the award of educational assistance is the later of—

(A) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(B) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible person takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While he or she is eligible for educational assistance under subpart C; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3512, 3672, 3689, 5110, 5113)

(e) *Adjusted effective date for award of educational assistance under 38 U.S.C. chapter 35 based on an original claim.* When determining the commencing date under §21.4131(d)(1), the Secretary will consider an eligible person's application for Survivors' and Dependents' Educational Assistance under 38 U.S.C. chapter 35 as having been filed on his or her eligibility date if—

(1) The eligibility date is more than 1 year before the date of the initial rating decision that establishes either:

(i) The veteran's death is service-connected, or

(ii) The veteran has a P&T disability;

(2) The eligible person files his or her original application for benefits under 38 U.S.C. chapter 35 with VA within 1 year of the initial rating decision;

(3) The eligible person claims educational assistance for pursuit of an approved program of education for a period that is more than 1 year before the date VA receives his or her original claim;

(4) VA either:

(i) Received the original application on or after November 1, 2000; or

(ii) Received the original application and, as of November 1, 2000, either—

(A) Had not acted on it; or

(B) Had denied it in whole or in part, but the claimant remained entitled to pursue available administrative and judicial remedies as to the denial; and

(5) The eligible person would have been eligible to educational assistance under 38 U.S.C. chapter 35 if he or she had filed a claim on his or her eligibility date.

(Authority: 38 U.S.C. 5113; Pub. L. 106–419, 114 Stat. 1832)

(f) *Liberalizing laws and Department of Veterans Affairs issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(g) *Correction of military records.* Eligibility of a veteran or eligible person may arise as the result of correction or modification of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other competent military authority. In these cases the commencing date of educational assistance allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department.

(Authority: 38 U.S.C. 3462(b), 3501(d))

(h) *Individuals in a penal institution.* If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.3132 (a) or (b) or § 21.5139, the rate will be increased or benefits will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program, or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(i) *Fugitive felons.* An award of educational assistance allowance to an otherwise eligible veteran or person will begin effective the date the warrant for the arrest of the felon is cleared by—

(1) Arrest;

(2) Surrendering to the issuing authority;

(3) Dismissal; or

(4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 5313B)

(j) [Reserved]

[31 FR 6774, May 6, 1966, as amended at 39 FR 43220, Dec. 11, 1974; 41 FR 47929, Nov. 1, 1976; 46 FR 62060, Dec. 22, 1981; 48 FR 37977 and 37978, Aug. 22, 1983; 49 FR 5113, Feb. 10, 1984; 50 FR 48581, Nov. 26, 1985; 51 FR 16318, May 2, 1986; 54 FR 28677, July 7, 1989; 57 FR 40614, Sept. 4, 1992; 61 FR 6782, Feb. 22, 1996; 61 FR 26113, May 24, 1996; 64 FR 23772, May 4, 1999; 66 FR 38938, July 26, 2001; 70 FR 25786, May 16, 2005; 72 FR 16968, Apr. 5, 2007; 72 FR 35661, June 29, 2007; 73 FR 30491, May 28, 2008]

### § 21.4135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance allowance will be as specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or eligible person.* (1) If the veteran or eligible person receives an advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(2) In all other cases if the veteran or eligible person dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 3680)

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election

was made pursuant to procedures described in §21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

(c)–(d) [Reserved]

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from.* (1) If the individual receives all nonpunitive grades, or withdraws from all courses other than because of being ordered to active duty, and no mitigating circumstances are found, VA will terminate the individual's educational assistance allowance effective the first date of the term in which the withdrawal occurs.

(2) If the individual withdraws from all other courses other than courses in paragraph (e)(3) of this section and with mitigating circumstances, or withdraws from all courses such that a punitive grade is or will be assigned for those courses:

(i) Residence training: Last date of attendance.

(ii) Independent study: Official date of change in status under the practices of the institution.

(3) If the individual withdraws from correspondence, flight, farm cooperative, cooperative or job training, benefits will be terminated effective:

(i) Correspondence training: Date last lesson is serviced.

(ii) Flight training: Date of last instruction.

(iii) Job training: Date of last training.

(iv) Farm cooperative training: Date of last class attendance.

(v) Cooperative training: Date of last training.

(Authority: 38 U.S.C. 3680(a))

(f) *Discontinued by VA (§§21.4215, 21.4216).* If VA discontinues payments of educational assistance as provided by §§21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in §21.4210, if the discontinuance were preceded by such a suspension.

(2) End of the month in which the decision to discontinue is effective pursuant to §21.4215(d), if the Director of a VA facility did not suspend payments prior to the discontinuance.

(Authority: 38 U.S.C. 3690)

(g) *Unsatisfactory progress, conduct or attendance §21.4277.* The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under §21.4277, whichever is earlier.

(Authority: 38 U.S.C. 3474, 3524)

(h) *Required certifications not received after certification of enrollment* (*§§21.4203 and 21.4204*). (1) If required certification of attendance of a veteran or eligible person enrolled in a course not leading to a standard college degree is not timely received, payments will be terminated date of last certification. If certification is later received, adjustment will be made based on facts found.

(2) If verification of enrollment and certificate of delivery of the check is not received within 60 days, in the case of an advance payment, the actual facts will be determined and adjustment made, if required, on the basis of facts found. If student failed to enroll, termination will be effective the beginning date of the enrollment period.

(i) *False or misleading statements.* See §21.4006.

(j) *Disapproval by State approving agency (§21.4259(a)).* If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) The date on which payments first were suspended by the Director of a VA facility as provided in §21.4210, if disapproval were preceded by such a suspension.

(2) End of the month in which disapproval is effective or notice of disapproval is received in the Department of Veterans Affairs, whichever is later, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.

(Authority: 38 U.S.C. 3672(a), 3690)

(k) *Disapproval by Department of Veterans Affairs (§§21.4215, 21.4259(c)).* If VA

disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.

(2) End of the month in which disapproval occurred, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.

(Authority: 38 U.S.C. 3671(b), 3672(a), 3690)

(l) *Conflicting interests* (*not waived*) (§ *21.4005*). Thirty days after date of letter notifying veteran or eligible person, unless terminated earlier for other reason.

(m) *Incarceration in prison or penal institution for conviction of a felony*. (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate under § 21.3132(a) or (b) or § 21.5139.

(2) The reduced rate or discontinuance will be effective the latest of the following dates.

(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program,

(ii) The date the veteran or eligible person is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.4131.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(n) *Fugitive felons: veterans eligible under 38 U.S.C. chapter 32*. VA will not award educational assistance allowance to an otherwise eligible veteran for any period after December 26, 2001, during which the veteran is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a veteran who is a fugitive felon is the later of—

(1) The date of the warrant for the arrest of the felon; or

(2) December 27, 2001.

(Authority: 38 U.S.C. 5313B)

(o) [Reserved]

(p) *Error; payee's or administrative*. (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

(2) Date of last payment on an erroneous award based solely on administrative error by VA or error in judgment by VA.

(Authority: 38 U.S.C. 5112(b)(10) and 5113)

(q) *Fraud; forfeiture resulting* (§ *21.4007*). Beginning date of award or day preceding date of fraudulent act whichever is later.

(r) *Treasonable acts or subversive activities; forfeiture* (§ *21.4007*). Beginning date of award or date preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.

(s) *Reduction in rate of pursuit of course (§ 21.4270)*. (1) VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual received a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(3) VA will reduce an individual's educational assistance allowance effective the date on which an individual reduces training when:

(i) The reduction does not occur at the beginning of the term;

(ii) The individual did not receive a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and

(iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew.

(4) If the individual reduces training by withdrawing from a part of a course and the withdrawal does not occur because the individual was ordered to active duty; there are no mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; VA will reduce the individual's educational assistance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(5) An individual who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of §21.4138(f) of this part are met. If those requirements are not met, VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 5113, 3680)

(t) *Change in law or Department of Veterans Affairs issue, or interpretation.* See §3.114(b) of this chapter.

(u) *Except as otherwise provided.* On basis of facts found.

(v) [Reserved]

(w) *Nonpunitive grade assigned without a withdrawal from courses.* (1) If an individual receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the individual's educational assistance allowance effective the last date of attendance when mitigating circumstances are found.

(2) If an individual receives a nonpunitive grade in a particular course for any reason other than a withdrawal from it, and there are no mitigating circumstances, VA will reduce his or her educational assistance effective the later of the following:

(i) The first date of enrollment for the term in which the grade applies, or

(ii) December 1, 1976. See paragraphs (e) and (s) of this section.

(Authority: 38 U.S.C. 3680(a)(4))

(x) *Independent study course loses accreditation.* Except as otherwise provided in §21.4252(g), if the veteran or eligible person is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3672, 3676, 3680A(a))

(y)–(aa) [Reserved]

CROSS REFERENCE: *Special restorative training.* See §21.3332.

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4135, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

### §21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) *General.* VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

(1) The individual withdraws because he or she is ordered to active duty; or

(2) All of the following criteria are met:

(i) There are mitigating circumstances;

(ii) The individual submits a description of the circumstances in writing to VA either within one year from the date VA notifies the individual that he or she must submit the mitigating circumstances or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The individual submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(b) *Representative mitigating circumstances.* The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:

(1) An illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable geographical transfer resulting from the individual's employment;

(4) An unavoidable change in the individual's conditions of employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the school;

(7) Unanticipated active duty for training;

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3680(a))

(c) *Failure to complete a course for the educationally disadvantaged.* If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(d) *Withdrawals after May 31, 1989.* In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a)(3))

(e) *Withdrawals during a drop-add period.* If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a))

[31 FR 8292, June 14, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4136, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

### § 21.4138 Certifications and release of payments.

For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational assistance allowance claims processed under 38 U.S.C. chapter 35 for educational institutions located in the Philippines.

(a) *Advance payments.* (1) VA will make payments of educational assistance in advance when:

(i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;

(ii) The student is enrolled for half time or more;

(iii) The educational institution at which the veteran, servicemember, reservist, or eligible person is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B) and (C) and (5) pertaining to receipt, delivery, or return of checks and certifications of delivery and enrollment;

(iv) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's, servicemember's, reservist's, or eligible person's educational institution;

(v) There is no evidence in the veteran's, servicemember's, reservist's, or eligible person's claim file showing

that he or she is not eligible for an advance payment;

(vi) The period for which the veteran, servicemember, reservist, or eligible person has requested a payment either—

(A) Is preceded by an interval of nonpayment of 30 days or more; or

(B) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(vii) The educational institution or the veteran, servicemember, reservist, or eligible person has submitted the certification required by §21.7151.

(2) The amount of the advance payment to a veteran, reservist, or eligible person is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month. The amount of the advance payment to a servicemember is the amount payable for the entire term, quarter, or semester, as applicable.

(3) VA will mail advance payments to the educational institution for delivery to the veteran, servicemember, reservist, or eligible person. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the period for which VA makes the advance payment.

(4) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if:

(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section;

(ii) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the veteran, servicemember, reservist, or eligible person or return to VA; or

(iii) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034, 3680(d))

(b) *Lump-sum payments.* A lump-sum payment is a payment of all educational assistance due for an entire quarter, semester, or term. VA will make a lump-sum payment to:

(1) A veteran or servicemember pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 30;

(2) A servicemember pursuing a program of education at the half-time rate or greater under 38 U.S.C. chapter 30, provided that VA did not make an advance payment to the servicemember for the term for which a lump-sum payment would otherwise be due; and

(3) An eligible person pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3034(c), 3680(f))

(c)–(d) [Reserved]

(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in §21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in §21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution.

(Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

(f) *Payment for intervals and temporary school closings.* VA may authorize payment for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (f)(1) through (f)(5) of this section concerning intervals and in paragraph (f)(6) of this section concerning temporary school closings. For the purposes of this paragraph, *interval* means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(1) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (f)(2) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (f)(3), (f)(4), and (f)(5) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(2) *Restrictions on payment for intervals.* VA will make no payment for an interval if:

(i) The student is training at less than the half-time rate on the last day of training during the term, quarter, semester, or summer term preceding the interval;

(ii) The student is on active duty;

(iii) The student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;

(iv) The student's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the student not to receive payment;

(v) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis,

(vi) The student withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter, or semester basis; or

(vii) The student receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

(3) *Payment for interval between periods of enrollment at different schools.* If the student transfers from one approved school for the purpose of enrolling in and pursuing a similar course at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar course at the second school, VA may not make payments for the interval.

(4) *Payment for intervals that occur at the same school.* (i) If the student remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters,

(B) A semester or quarter and a term that is at least as long as the interval,

(C) A semester or quarter and a summer term that is at least as long as the interval,

(D) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(E) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(ii) If the student remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between

summer sessions within a summer term.

(Authority: 38 U.S.C. 3680)

(5) *Payment for intervals that occur between overlapping enrollments.* (i) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and what dates the interval and enrollment periods will be considered to begin and end, as follows:

(A) By treating the ending date of each enrollment period as though it were the student's last date of training before the interval,

(B) By treating the beginning date of each enrollment period as though it were the student's first date of training after the interval,

(C) By examining the interval payment that would be made to the student on the basis of the various combinations of beginning and ending dates, and

(D) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(ii) VA will not reduce the interval rate of payment as a result of training the student may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

(Authority: 38 U.S.C. 3680(a))

(6) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraphs (f)(2) through (f)(5) of this section to determine if payment may be continued during the interval.

(i) If payment would not be inconsistent with the provisions of paragraphs (f)(2) through (f)(5) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if, in the judgment of the VA official specified in this paragraph, either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(A) The Director of the VA Regional Processing Office of jurisdiction if:

(*1*) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(*2*) If the reason for the closing is a strike, the strike has lasted 30 days or less and is not anticipated to last more than 30 days.

(B) The Director, Education Service if:

(*1*) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(*2*) The reason for the closing is a strike and the strike lasts, or is anticipated to last, more than 30 days.

(ii) A school that disagrees with a decision made under paragraph (f)(6) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(A) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments.

(B) Under Secretary for Benefits, if the Director, Education Service, made

the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3680(a))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0604)

[43 FR 35295, Aug. 9, 1978, as amended at 44 FR 62497, Oct. 31, 1979; 46 FR 20673, Apr. 7, 1981; 48 FR 37982, Aug. 22, 1983; 54 FR 33888, Aug. 17, 1989; 57 FR 24367, June 9, 1992; 64 FR 52651, Sept. 30, 1999; 68 FR 34328, June 9, 2003; 68 FR 35178, June 12, 2003; 73 FR 65263, Nov. 3, 2008]

### § 21.4145 Work-study allowance.

(a) *Eligibility*. (1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30, 32 or 33 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when-

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(b) *Selection criteria*. Whenever feasible, the Department of Veterans Affairs will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Department of Veterans Affairs shall consider the following additional selection criteria:

(1) Need of the veteran, reservist, or eligible person to augment his or her educational assistance allowance;

(2) Availability to the veteran, reservist, or eligible person of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran, reservist, or eligible person; and

(4) Compatibility of the work assignment to the veteran's, reservist's, or eligible person's physical condition.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))

(c) *Utilization*. Work-study services may be utilized in connection with:

(1) Outreach services program as carried out under the supervision of a Department of Veterans Affairs employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs;

(3) Hospital and domiciliary care and medical treatment at VA facilities;

(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and

(5) Any other appropriate activity of VA.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) *Rate of payment*. In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) *Payment in advance*. VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date the contract is signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(f) *Veteran, reservist, or eligible person reduces rate of training.* In the event the veteran, reservist, or eligible person reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, reservist, or eligible person, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter, or semester in which the veteran, reservist, or eligible person ceases to be a three-quarter-time student.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(g) *Veteran, reservist, or eligible person terminates training.* (1) If the veteran, reservist, or eligible person terminates all training before completing an agreement, the Director of the Department of Veterans Affairs facility or designee:

(i) May permit him or her to complete the portion of the agreement represented by the money the Department of Veterans Affairs has advanced to the veteran, reservist, or eligible person for which he or she has performed no services, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran, reservist, or eligible person must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran, reservist, or eligible person terminates training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(h) *Indebtedness for unperformed service.* (1) If the veteran, reservist, or eligible person has received an advance for hours of unperformed service, and the Department of Veterans Affairs has evidence that he or she does not intend to perform that service, the advance:

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis of the contract.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(i) *Survey.* The Department of Veterans Affairs will conduct an annual survey of its regional offices to determine the number of veterans, reservists, or eligible persons whose services can be utilized effectively.

(ii) [Reserved]

(Authority: 38 U.S.C. 3485)

[38 FR 12214, May 10, 1973, as amended at 48 FR 37983, Aug. 22, 1983; 61 FR 26113, May 24, 1996; 74 FR 14667, Mar. 31, 2009]

### §21.4146 Assignments of benefits prohibited.

(a) *General.* Section 5301(a), Title 38 U.S.C., provides that payments of benefits due or to become due under the laws administered by the Department of Veterans Affairs shall not be assigned, except to the extent specifically authorized by law. No law specifically authorizes assignments of educational assistance allowances payable under 38 U.S.C. chapters 30, 32, 33, 35, or 36, or 10 U.S.C. chapter 1606, and therefore none shall be made.

(b) *Designating an attorney-in-fact.* In any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(c) *Arrangements amounting to an assignment.* Payments may be made to a post office box address or a bank address only if the educational institution (other than an organization or entity offering a licensing or certification test) attests that it has not entered into an assignment agreement with the student, and is not the attorney-in-fact of the student with power to negotiate an educational assistance

check on behalf of the student and is not otherwise able to control the proceeds of the benefits check. Such statements shall be subject to review and when determined to be false, may be cause for creation of an overpayment to the account of the veteran or other eligible person, for which the educational institution (other than an organization or entity offering a licensing or certification test) may be liable under the provisions of § 21.4009.

(d) *Correspondence school addresses.* A request by a veteran or other eligible person to send the benefit check payable to him or her at an address which is an educational institution primarily engaged in correspondence course instruction will be presumed not to be the actual address of the veteran or other eligible person and will not be honored. Benefits checks will not be sent to the veteran or other eligible person in that event until a new address is provided designating the individual's mailing address.

(e) *Referral to Committee on Educational Allowances.* When the evidence of record indicates that an educational institution has violated the terms of this section, the matter will be referred to the facility Committee on Educational Allowances as provided in §§ 21.4210(g) and 21.4212.

(Authority: 38 U.S.C. 5301(a))

[43 FR 35296, Aug. 9, 1978, as amended at 44 FR 62498, Oct. 31, 1979; 61 FR 26114, May 24, 1996; 63 FR 35831, July 1, 1998; 72 FR 16969, Apr. 5, 2007; 74 FR 14667, Mar. 31, 2009]

STATE APPROVING AGENCIES

**§ 21.4150 Designation.**

(a) The Chief Executive of each State is requested to create or designate a State department or agency as the *State approving agency* for his State, for the purpose of assuming the responsibilities delegated to the State under 38 U.S.C. chapter 36, or if the law of the State provides otherwise, to indicate the agency provided by such law (38 U.S.C. 3671(a)).

(b) The Chief Executive of each State will notify the Department of Veterans Affairs of any change in the designation of a State approving agency.

(c) The provisions of 38 U.S.C. chapter 36 and the sections in this part which refer to the State approving agency will be deemed to refer to VA:

(1) With respect to a State, when that State:

(i) Does not have and fails or declines to create or designate a State approving agency, or

(ii) Fails to enter into an agreement as provided in § 21.4153; and

(2) When VA has approval, disapproval, or suspension authority (under paragraphs (d), (e), (f), or (g) of this section, § 21.4152, or as otherwise provided by law).

(Authority: 38 U.S.C. 3671(b)(1))

(d) Any function, power or duty otherwise required to be exercised by a State, or by an officer or agency of a State, will, with respect to the Republic of Philippines, be exercised by the station head.

(Authority: 38 U.S.C. 512(a), 3561(b))

(e) The Secretary shall act as State approving agency for programs of apprenticeship, the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29 U.S.C. as a national apprenticeship program for operation in more than one State and the training establishment is a carrier directly engaged in interstate commerce which provides such training in more than one State.

(Authority: 38 U.S.C. 3672(c))

(f) Approval of a course of education offered by any agency or instrumentality of the Federal Government shall be under the authority of the Secretary.

(Authority: 38 U.S.C. 3672(b))

(g) Approval under 38 U.S.C. 3689 of a licensing or certification test offered by any agency or instrumentality of the Federal government will be under the authority of the Secretary.

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

CROSS REFERENCE: *Course and licensing and certification test approval; jurisdiction and notices.* See § 21.4250.

[31 FR 6774, May 6, 1966, as amended at 35 FR 9815, June 16, 1970; 37 FR 6679, Apr. 1, 1972; 54 FR 34987, Aug. 23, 1989; 54 FR 49756, Dec. 1, 1989; 72 FR 16969, Apr. 5, 2007]

### §21.4151 Cooperation.

(a) The Department of Veterans Affairs and the State approving agencies will take cognizance of the fact that definite duties, functions and responsibilities are conferred upon each of them. To assure that programs of education are administered effectively and efficiently, the cooperation of the Department of Veterans Affairs and the State approving agencies is essential.

(Authority: 38 U.S.C. 3673(a))

(b) *State approving agency responsibilities*. State approving agencies are responsible for:

(1) Inspecting and supervising schools within the borders of their respective States;

(2) Determining those courses which may be approved for the enrollment of veterans and eligible persons;

(3) Ascertaining whether a school at all times complies with its established standards relating to the course or courses which have been approved;

(4) Determining those licensing and certification tests that may be approved for cost reimbursement to veterans and eligible persons;

(5) Ascertaining whether an organization or entity offering an approved licensing or certification test complies at all times with the provisions of 38 U.S.C. 3689; and

(6) Under an agreement with VA rendering services and obtaining information necessary for the Secretary's approval or disapproval under chapters 30 through 36, title 38 U.S.C. and chapters 107 and 1606, title 10 U.S.C., of courses of education offered by any agency or instrumentality of the Federal Government within the borders of their respective States.

(Authority: 38 U.S.C. 3672, 3673, 3674, 3689)

(c) The Department of Veterans Affairs will furnish State approving agencies with copies of such Department of Veterans Affairs informational and instructional material as may aid them in carrying out the provisions of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3673(b))

[31 FR 6774, May 6, 1966, as amended at 37 FR 6679, Apr. 1, 1972; 54 FR 49756, Dec. 1, 1989; 61 FR 20728, May 8, 1996; 72 FR 16969, Apr. 5, 2007]

### §21.4152 Control by agencies of the United States.

(a) *Control of educational institutions and State agencies generally prohibited*. No department, agency, or officer of the United States will exercise any supervision or control over any State approving agency or State educational agency, or any educational institution.

(Authority: 38 U.S.C. 3682; Pub. L. 100–323)

(b) *Authority retained by VA*. The provisions of paragraph (a) of this section do not restrict authority conferred on VA

(1) To define full-time training in certain courses.

(2) To determine whether overcharges were made by a school and to disapprove the school for enrollment of veterans or eligible persons not previously enrolled. See §21.4210(d).

(3) To determine whether the State approving agencies under the terms of contract or reimbursement agreements are complying with the standards and provisions of the law.

(4) To examine the records and accounts of schools which are required to be made available for examination by duly authorized representatives of the Federal Government. See §§21.4209 and 21.4263.

(5) To disapprove schools, courses, or licensing or certification tests for reasons stated in the law and to approve schools, courses, or licensing or certification tests notwithstanding lack of State approval.

[31 FR 6774, May 6, 1966, as amended at 54 FR 49756, Dec. 1, 1989; 61 FR 29296, June 10, 1996; 63 FR 35831, July 1, 1998; 72 FR 16969, Apr. 5, 2007]

### §21.4153 Reimbursement of expenses.

For the purposes of this section, other than paragraph (d)(4) of this section, ''educational institution'' includes an organization or entity offering licensing or certification tests.

(a) *Expenses will be reimbursed under contract*—(1) *Scope of contracts.* (i) If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, VA will negotiate a contract or agreement with the State or local agency to pay (subject to available funds and acceptable annual evaluations) reasonable and necessary expenses incurred by the State or local agency in—

(A) Determining the qualifications of educational institutions and training establishments to furnish programs of education to veterans and eligible persons,

(B) Supervising educational institutions and training establishments, and

(C) Furnishing any other services VA may request in connection with the law governing VA education benefits.

(ii) VA will take into account the results of annual evaluations carried out under § 21.4155 of this part when negotiating the terms and conditions of the contract or agreement.

(2) *Reimbursable supervision.* Supervision will consist of the services required:

(i) To determine that the programs are furnished in accordance with the law and with any other reasonable criteria as may be imposed by the State, and

(ii) To disapprove any programs which fail to meet the law and the established criteria.

(Authority: 38 U.S.C. 3674, 3689)

(b) *Reimbursement.* The Under Secretary for Benefits and the Director, Education Service, are authorized to enter into agreements necessary to fulfill the purpose of paragraph (a) of this section. See § 21.4001(b).

(Authority: 38 U.S.C. 512(a))

(c) *Reimbursable expenses.* Reimbursement may be made from the funds provided in the existing contract with the State approving agency under the provisions of this section. No reimbursement may be authorized for expenses incurred by any individual who is not an employee of the State approving agency.

(1) *Salaries.* Salaries for which reimbursement may be authorized under a contract:

(i) Will not be in excess of the established rate of pay for other employees of the State with comparable or equivalent duties and responsibilities,

(ii) Will be limited to the actual salary expense incurred by the State, and

(iii) Will include the basic salary rate plus fringe benefits, such as social security, retirement, and health, accident, or life insurance, that are payable to all similarly circumstanced State employees.

(2) *Travel.* (i) Reimbursement will be made under the terms of the contract for travel of personnel engaged in activities in connection with the inspection, approval or supervision of educational institutions, including—

(A) Travel of personnel attending training sessions sponsored by VA and the State approving agencies.

(B) Expenses of attending out-of-State meetings and conferences only if the Director, Education Service, authorizes the travel.

(Authority: 38 U.S.C. 3674; Pub. L. 100–323)

(ii) Travel expenses for which reimbursement may be authorized under a contract will be limited to:

(A) Expenses allowable under applicable State laws or travel regulations of the State or agency;

(B) Expenses for travel actually performed by employees specified under the terms of the contract and;

(C) Either actual expenses for transportation, meals, lodging and local telephone calls, or the regular State or agency per diem allowance.

(iii) All claims for travel expenses payable under the terms of a contract must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency.

(Authority: 38 U.S.C. 3674)

(3) *Administrative expenses.* In determining the allowance for administrative expenses for which payment may be authorized, VA will apply the provisions of 38 U.S.C. 3674(b). In making

that application, VA will determine reimbursable salary cost pursuant to paragraph (c)(1) of this section.

(Authority: 38 U.S.C. 3674(b))

(4) *Subcontracts.* The State approving agency may also be reimbursed for work performed by a subcontractor provided:

(i) The work has a direct relationship to the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; and

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3674)

(ii) The Contracting Officer has approved the subcontract in advance.

(Authority: 38 U.S.C. 3674; Pub. L. 94–502, Pub. 95–902)

(d) *Nonreimbursable expenses.* The Department of Veterans Affairs will not provide reimbursement under reimbursement contracts for:

(1) Expenditures other than salaries and travel of personnel required to perform the services specified in the contract and Department of Veterans Affairs regulations.

(2) Supplies, equipment, printing, postage, telephone services, rentals, and other miscellaneous items or a service furnished directly or indirectly.

(3) Except as provided in paragraph (c)(2) of this section, the salaries and travel of personnel while attending training sessions, or when they are engaged in activities other than those in connection with the inspection, approval, or supervision of educational institutions.

(4) The supervision of educational institutions which do not have veterans or eligible persons enrolled.

(5) Expenses incurred in the administration of an educational program which are costs properly chargeable as tuition costs, such as the development of course material or individual educational programs, teacher training or teacher improvement activities, expenses of coordinators, or administrative costs, such as those involving selection and employment of teachers. (This does not preclude reimbursement for expenses of the State agency incurred in the development of standards and criteria for the approval of courses under the law.)

(6) Expenses of a State approving agency for inspecting, approving or supervising courses when the agency is responsible for establishing, conducting or supervising those courses.

(7) Any expense for supervision or other services to be covered by contract which are already being reimbursed or paid from tuition funds under this law.

(e) *Agency operating plan.* A request by a State approving agency for reimbursement under the law will be subject to the requirements of 41 CFR 8–7.5101–8 as to ''Equal Opportunity''. The request will be accompanied by the proposed plan of operation and the specific duties and responsibilities of all personnel for which reimbursement of salaries and travel expense is required.

(1) The Department of Veterans Affairs will determine personnel requirements for which the Department of Veterans Affairs provides reimbursement on the basis of estimated workloads agreed upon between the Department of Veterans Affairs and the State agency. Agreements are subject to review and adjustment.

(2) Workloads will be determined upon three factors:

(i) Inspection and approval visits,

(ii) Supervisory visits, and

(iii) Special visits at the request of the Department of Veterans Affairs.

(f) *Contract compliance.* Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Contracting Officer determines that the State has failed to comply with the standards or provisions of the law or with terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the State may request the Contracting Officer to reconsider his or her decision or may initiate action under the Disputes clause of the contract. See 48 CFR 801.602.

(Authority: 38 U.S.C. 3674)

(g) *Contract disputes.* The State approving agency reimbursement contract is subject to the Contract Disputes Act of 1978. Disputes arising under, or relating to, the contract will be resolved in accordance with the disputes article of the contract and with appropriate procurement regulations.

(Authority: 41 U.S.C. 602)

[31 FR 6774, May 6, 1966, as amended at 40 FR 42880, Sept. 17, 1975; 43 FR 35296, Aug. 9, 1978; 44 FR 62498, Oct. 31, 1979; 48 FR 37983, Aug. 22, 1983; 51 FR 16316, May 2, 1986; 54 FR 49757, Dec. 1, 1989; 61 FR 20728, May 8, 1996; 61 FR 26114, May 24, 1996; 72 FR 16969, Apr. 5, 2007; 74 FR 14667, Mar. 31, 2009]

### § 21.4154 Report of activities.

(a) *State approving agencies must report their activities.* Each State approving agency entering into a contract or agreement under § 21.4153 of this part must submit a report of its activities to VA. The report may be submitted monthly or quarterly by the State approving agency as provided in the contract or agreement.

(Authority: 38 U.S.C. 3674; Pub. L. 100–323)

(b) *Content of the report.* The report:

(1) Shall be in the form prescribed by the Secretary;

(2) Shall detail the activities of the State approving agencies under the agreement or contract during the preceding month or quarter, as appropriate;

(3) May include, at the option of the State approving agency, a cumulative report of its activities from the beginning of the fiscal year to date;

(4) Shall describe the services performed and the determination made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Department of Veterans Affairs; and

(5) Shall include other information as the Secretary may prescribe.

(Authority: 38 U.S.C. 3674)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051)

[49 FR 26227, June 27, 1984, as amended at 54 FR 49757, Dec. 1, 1989; 57 FR 28087, June 24, 1992; 72 FR 16969, Apr. 5, 2007]

### § 21.4155 Evaluations of State approving agency performance.

(a) *Annual evaluations required.* (1) VA shall conduct in conjunction with State approving agencies an annual evaluation of each State approving agency. The evaluation shall be based on standards developed by VA with State approving agencies. VA shall provide each State approving agency an opportunity to comment upon the evaluation.

(2) VA shall take into account the result of the annual evaluation of a State approving agency when negotiating the terms and conditions of a contract or agreement as provided in § 21.4153(a) of this part.

(Authority: 38 U.S.C. 3674A(a); Pub. L. 100–323)

(b) *Development of a training curriculum.* (1) VA shall cooperate with State approving agencies in developing and implementing a uniform national curriculum, to the extent practicable, for—

(i) Training new employees of State approving agencies, and

(ii) Continuing the training of the employees of the State approving agencies.

(2) VA with the State approving agencies shall sponsor the training and continuation of training provided by this paragraph.

(Authority: 38 U.S.C. 3674A; Pub. L. 100–323)

(c) *Development, adoption and application of qualification and performance standards for employees of State approving agencies.* (1) VA shall:

(i) Develop with the State approving agencies prototype qualification and performance standards;

(ii) Prescribe those standards for State approving agency use in the development of qualification and performance standards for State approving agency personnel carrying out approval responsibilities under a contract or agreement as provided in § 21.4153(a) of this part; and

(iii) Review the prototype qualification and performance standards with the State approving agencies no less frequently than once every five years.

(2) In developing and applying standards described in paragraph (d)(1) of this section, a State approving agency may take into consideration the State's merit system requirements and other local requirements and conditions. However, no State approving agency may develop, adopt or apply qualification or performance standards that do not meet the requirements of paragraph (d)(3) of this section.

(3) The qualification and performance standards adopted by the State approving agency shall describe a level of qualification and performance which shall equal or exceed the level of qualification and performance described in the prototype qualification and performance standards developed by VA with the State approving agencies. The State approving agency may amend or modify its adopted qualification and performance standards annually as circumstances may require.

(4) VA shall provide assistance in developing these standards to a State approving agency that requests it.

(5) After November 19, 1989, each State approving agency carrying out a contract or agreement with VA under § 21.4153(a) shall:

(i) Apply qualification and performance standards based on the standards developed under this paragraph, and

(ii) Make available to any person, upon request, the criteria used to carry out its functions under a contract or agreement entered into under § 21.4153(a) of this part.

(6) A State approving agency may not apply these standards to any person employed by the State approving agency on May 20, 1988, as long as that person remains in the position in which the person was employed on that date.

(Authority: 38 U.S.C. 3674 A(b); Pub. L. 100–323)

[54 FR 49757, Dec. 1, 1989, as amended at 61 FR 29296, June 10, 1996]

SCHOOLS

### § 21.4200 Definitions.

The definitions in this section apply to this subpart, except as otherwise provided. The definitions of terms defined in this section also apply to subparts C, G, H, K, L, and P if they are not otherwise defined for purposes of those subparts.

(a) *School, educational institution, institution.* The terms *school, educational institution* and *institution* mean:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private elementary school or secondary school;

(4) A training establishment as defined in paragraph (c) of this section;

(5) Any entity other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program; or

(Authority: 38 U.S.C. 3452)

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

(b) *Divisions of the school year.* (1) *Ordinary School Year* is generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(2) *Term,* any regularly established division of the ordinary school year under which the school operates.

(3) *Quarter,* a division of the ordinary school year, usually a period from 10 to 13 weeks long.

(4) *Semester,* a division of the ordinary school year, usually a period from 15 to 19 weeks long.

(5) *Summer term,* the whole of the period of instruction at a school which takes place between ordinary school years. A summer term may be divided into several summer sessions.

(Authority: 38 U.S.C. 3680(a))

(6) *Summer session*, any division of a summer term.

(Authority: 38 U.S.C. 3680(a))

(c) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

(d) *External degree*. This term means a standard college degree given by an accredited college or university based on satisfactory completion of a prescribed program of independent study. The program may require occasional attendance for a workshop or seminar and may include some regular residence course work.

(e) *Standard college degree*. The term means an associate or higher degree awarded by:

(1) An institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or

(2) An institution of higher learning that is a *candidate* for accreditation, as that term is used by the regional or the national accrediting agencies; or

(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs.

(Authority: 38 U.S.C. 3452)

(f) *Undergraduate college degree*. The term means a college or university degree obtained through the pursuit of unit subjects which are below the graduate level. Included are associate degrees, bachelors' degrees and first professional degrees.

(g) *Standard class session*. The term *standard class session* means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. It is not less than 1 hour (or one 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours (or three 50-minute periods) of workshop training.

(Authority: 38 U.S.C. 3688(c))

(h) *Institution of higher learning*. This term means:

(1) A college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(2) When there is no State law to authorize the granting of a degree, a school which:

(i) Is accredited for degree programs by a recognized accrediting agency, or

(ii) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(3) A hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a post-secondary degree.

(4) An educational institution which:

(i) Is not located in a State,

(ii) Offers a course leading to a standard college degree or the equivalent, and

(iii) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located.

(Authority: 38 U.S.C. 3452)

(i) *Audited course*. The term means any credit course which a student attends as a listener only with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. See § 21.4252(i).

(Authority: 38 U.S.C. 3680(a)(3))

(j) *Nonpunitive grade*. The term means any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from the course, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit toward the school's requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average. Therefore, it has the same effect as an audited course. See § 21.4135(e).

(k) *Punitive grade*. The term means a grade assigned for pursuit of a course which is used in determining the student's overall progress toward completion of the school's requirements for graduation. Unlike the nonpunitive grade, the punitive grade does affect the criteria to be met by the student for graduation, *i.e.*, it is a factor in computing the student's grade average or grade point average, for example. For this reason it is not the same as an audited course, since it does have an effect upon the student's ability to meet the school's criteria for graduation. See § 21.4135(e).

(l) *Drop-add period*. The term means a reasonably brief period at the beginning of a term, not to exceed 30 days, officially designated by a school for unrestricted enrollment changes by students.

(Authority: 38 U.S.C. 3680(a)(4))

(m) *Normal commuting distance*. Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:

(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or

(2) Other comparable evidence clearly shows that students commute regularly between the two locations.

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

(n) *Enrollment*. This term means the state of being on that roll, or file of a school which contains the names of active students.

(o) *Pursuit of a program of education*. (1) This term means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of Title 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through:

(i) Resident courses,

(ii) Independent study courses,

(iii) Correspondence courses,

(iv) An apprenticeship or other on-the-job training program,

(v) Flight courses,

(vi) A farm cooperative course,

(vii) A cooperative course, or

(viii) A graduate program of research in absentia.

(2) The Department of Veterans Affairs will consider a veteran or eligible person who qualifies under § 21.4138 for payment during an interval or school closing, or who qualifies for payment but whose work is interrupted by a holiday vacation as defined in § 21.7020(b)(16), to be in pursuit of a program of education during the interval, school closing or holiday vacation.

(p) *Enrollment period*. (1) This term means an interval of time during which a veteran or eligible person:

(i) Is enrolled in an educational institution; and

(ii) Is pursuing his or her program of education.

(2) This term applies to each unit course or subject in the veteran's or eligible person's program of education.

(q) *Attendance*. This term means the presence of a veteran or eligible person:

(1) In the class where the approved course is being taught in which he or she is enrolled;

(2) At a training establishment; or

(3) Any other place of instruction, training or study designated by the

educational institution or training establishment where the veteran or eligible person is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 3680(g))

(r) *In residence on a standard quarter- or semester-hour basis*. This term means study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout a standard quarter or semester for one quarter- or one semester-hour credit.

(Authority: 38 U.S.C. 3688(c))

(s) *Deficiency course*. This term means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(t) *Remedial course*. This term means a special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(u) *Refresher course*. This term means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

(Authority: 38 U.S.C. 3491(a)(2))

(v) *Reservist*. The term *reservist* means a member of the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606.

(Authority: 38 U.S.C. 3002)

(w) *Alternative teacher certification program*. The term *alternative teacher certification program*, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (a)(5) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 38 U.S.C. 3452(c))

(x) *State*. The term *State* has the same meaning as provided in § 3.1(i) of this chapter.

(Authority: 38 U.S.C. 101(20))

(y) *Pilot certificate*. A *pilot certificate* is a pilot certificate issued by the Federal Aviation Administration. The term means a pilot's license as that term is used in 10 U.S.C. chapter 1606 and 38 U.S.C. chapters 30 and 32.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(z) *Proprietary educational institution*. The term *proprietary educational institution* (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

(1) Is not a public educational institution;

(2) Is in a State; and

(3) Is legally authorized to offer a program of education in the State where the educational institution is physically located.

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

(aa) *High technology industry:* The term *high technology industry* includes the following industries:

(1) Biotechnology;

(2) Life science technologies;

(3) Opto-electronics;

(4) Computers and telecommunications;

(5) Electronics;

(6) Computer-integrated manufacturing;

(7) Material design;

(8) Aerospace;

(9) Weapons;

(10) Nuclear technology; and

(11) Any other identified advanced technologies in the biennial Science and Engineering Indicators report published by the National Science Foundation.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(bb) *Employment in a high technology industry*. *Employment in a high technology industry* means employment in a high technology occupation specific to a high technology industry.

(Authority: 38 U.S.C. 3014A)

(cc) *High technology occupation*. The term *high technology occupation* means an occupation that leads to employment in a high technology industry. These occupations consist of:

(1) Life and physical scientists;

(2) Engineers;

(3) Mathematical specialists;

(4) Engineering and science technicians;

(5) Computer specialists; and

(6) Engineering, scientific, and computer managers.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(dd) *Computer specialists*. The term *computer specialists* includes the following occupations:

(1) Database, system, and network administrators;

(2) Database, system, and network developers;

(3) Computer and network engineers;

(4) Systems analysts;

(5) Programmers;

(6) Computer, database, and network support specialists;

(7) All computer scientists;

(8) Web site designers;

(9) Computer and network service technicians;

(10) Computer and network electronics specialists; and

(11) All certified professionals, certified associates and certified technicians in the information technology field.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(ee) *Certification test*. The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(ff) *Licensing test*. The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(gg) *Organization or entity offering a licensing or certification test*. (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to the individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test but does not issue the license or certificate; or

(ii) An organization or entity that administers a test but does not issue the license or certificate if that administering organization or entity cannot provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(hh) *Tuition assistance top-up*. The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

(ii) *VA Regional Processing Office*. The term *VA Regional Processing Office* means a VA office where claims for educational assistance under 38 U.S.C.

chapters 30, 32, and 35 and 10 U.S.C. chapter 1606 are allowed or disallowed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3685, 3689)

(jj) [Reserved]

(kk) *Fugitive felon*. The term *fugitive felon* means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(Authority: 38 U.S.C. 5313B)

(ll) *Felony*. The term *felony* means a major crime or offense defined as such under the law of the place where the offense was committed or under Federal law. It includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(Authority: 38 U.S.C. 5313B)

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General*. Except as otherwise provided in this section the Department of Veterans Affairs shall not approve an enrollment in any course for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by VA under title 38, U.S.C., or under title 10, U.S.C. This restriction may be waived in whole or in part.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(b) *Affected schools*. The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses*. (1) The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(i) Any farm cooperative course; and

(ii) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as *nonappropriated sundry fund activities* which are governmental instrumentalities.

(2) The provisions of paragraph (a) of this section apply to the enrollment of a serviceperson in a course leading to a high school diploma, equivalency cerificate, or a refresher, remedial or deficiency course, but they do not apply to the enrollment of a veteran in such a course.

(3) Except as provided in paragraph (c)(2) of this section, the provisions of paragraph (a) of this section do not apply to an approved course which:

(i) Is offered under contract with the Department of Defense,

(ii) Is on or immediately adjacent to a military base, or a facility of the National Guard (including the Air National Guard) or the Selected Reserve,

(iii) Has been approved by the State approving agency of the State:

(A) Where the base is located or

(B) Where the parent school is located if the course is oftered overseas, and

(iv) Is available only to:

(A) Military personnel and their dependents, or

(B) Military personnel, their dependents and civilian employees of a base located in a State, or

(C) Persons authorized by the base commander to attend the course provided the base is located outside the United States.

(D) In the case of a course offered on or immediately adjacent to a facility of the National Guard or the Selected Reserve, members of the National Guard, members of the Selected Reserve and their dependents.

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans, eligible persons, and reservists receiving assistance under 38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). However, the provisions of paragraph (a) of this section will apply to such a course when—

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(i) The course is a course of Special Assistance for the Educationally Disadvantaged and a serviceperson enrolls in it, or

(ii) The Director of the Department of Veterans Affairs facility of jurisdiction has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(d) *Applications for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(4) of this section. To obtain an exemption as stated in paragraph (c)(4) of this section schools must submit reports as required in paragraph (f)(1) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(e) *Computing the 85–15 percent ratio*—(1) *Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85–15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions, as well as courses or curricula leading to a secondary school diploma or equivalency certificate offered at any branch or extention, must have an 85–15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85–15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(A) General 2-year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (*i.e.*, AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(B) Students attending 4–year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85–15 percent computation must be made for each specific curriculum, *i.e.*, BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85–15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section, the following students will be considered to be nonsupported provided VA is not furnishing them with educational assistance under title 38, U.S.C., or under title 10, U.S.C.:

(i) Students who are not veterans or reservists, and are not in receipt of institutional aid.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(ii) All graduate students in receipt of institutional aid.

(iii) Students in receipt of any Federal aid (other than Department of Veterans Affairs benefits).

(iv) Undergraduates and non-college degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) *Calculation.* (i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the full-time equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Department of Veterans Affairs student in a correspondence course has not completed a lesson nor made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85–15 percent ratio.

(ii) The 85–15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All approved courses offered under 14 CFR parts 141 and 142 at a flight school will be considered to be one course for the purpose of making this computation. Similarly, all other approved courses offered at a flight school will be considered to be one course for the purpose of making this computation. In this computation hours of training or tuition charges for students enrolled—

(A) In the recreational pilot certification course and the private pilot certification course will be excluded;

(B) In a ground instructor certification course will be included;

(C) In courses approved under 14 CFR part 141, other than a ground instructor certification course, will be actual hours of logged instructional flight time or the charges for those hours; and

(D) In courses not approved under 14 CFR part 141, such as courses offered by flight simulator or courses for navigator or flight engineer, shall include ground training time or charges; actual logged instructional flight time or charges; and instructional time in a

flight simulator or charges for that training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(f) *Reports.* (1) Schools must submit to VA all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the beginning of the first term for which the school wants the exemption to apply. If the school is not organized on a term, quarter or semester basis, it shall make that submission no later than 30 days after the beginning of the first calendar quarter for which the school wishes the exemption to apply. A school having received an exemption found in paragraph (c)(4) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Department of Veterans Affairs assistance:

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(i) Unless the Director of the VA facility of jurisdiction has reason to believe that the enrollment of eligible veterans and eligible persons in a specific course may exceed 85 percent of the total enrollment in a specific course, or

(ii) Until such time as the total number of veterans, eligible persons and reservists receiving assistance under 38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time the procedures contained in paragraph (f)(2) of this section shall apply.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(2) The school must submit all calculations made under paragraph (e)(3) of this section to the Department of Veterans Affairs according to these time limits.

(i) If the school is organized on a term, quarter or semester basis, the calculations must be submitted no later than 30 days after the beginning of each regular school term (excluding summer sessions), or before the beginning date of the next term, whichever occurs first.

(ii) If a school is not organized on a term, quarter or semester basis, reports must be received by the Department of Veterans Affairs no later than 30 days after the end of each calendar quarter.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(g) *Effect of the 85–15 percent ratio on processing new enrollments.* (1) The Department of Veterans Affairs will process new enrollments of eligible veterans (and servicepersons where this provision applies to them), in a course on the basis of the school's submission of the most recent computation showing that:

(i) The 85–15 percent ratio is satisfactory, or

(ii) The course is exempt under paragraph (c)(4) of this section.

(2) Except for those enrollments with a beginning date before or the same as the date the school completed the most recent computation, no benefits will be paid under 10 U.S.C. chapter 1606 or under 38 U.S.C. chapter 30, 32, 33, or 36, when that computation establishes that the course:

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(i) Neither has a satisfactory 85–15 percent ratio, nor

(ii) Is exempt under paragraph (c)(4) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) If a school fails to submit a timely computation, no benefits will be paid for:

(i) The enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate if the enrollment has beginning dates beyond the expiration of the allowable computation period, or

(ii) The enrollment of a veteran in any course to which the provisions of

paragraph (a) of this section apply if the enrollment has beginning dates beyond the expiration of the allowable computation period.

(4) Enrollments with later beginning dates may be processed only after the school certifies that:

(i) The proper ratio has been reestablished for the course, or

(ii) The course is exempt from the requirement under paragraph (c)(4) of this section.

(5) When a school shows a reestablished 85–15 percent ratio, each new veteran enrollment or enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate which is submitted after reestablishment must be individually computed into the ratio to ensure that the 85 percent limitation is not again immediately exceeded. The Department of Veterans Affairs will require individual computations until:

(i) The end of the term for which the ratio was reestablished, or

(ii) The end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(6) Once a student is properly enrolled in a course which either meets the 85–15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85–15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a ''break'' in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving VA education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education Service, through the Director of the VA facility of jurisdiction. When applying, a school must submit sufficient information to allow the Director, Education Service, to judge the merits of the request against the criteria shown in this paragraph. This information and any other pertinent information available to VA shall be considered in relation to these criteria:

(1) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of its notice from the Department of Education that the school is eligible to be considered for a grant under the Strengthening Institutions Program or the Special Needs Program, if applicable. Otherwise the school should submit data sufficient to allow the Director, Education Service, to judge whether the school is similar to institutions which the Department of Education considers to be eligible to apply for a grant under these programs. The pertinent criteria and data categories are published in Title 34, Code of Federal Regulations, Chapter VI, part 624, subpart A; part 625, subpart A; and part 626, subpart A. The requirements of those criteria that a school be a ''public or nonprofit'' institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to VA.

(4) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire

course, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

[44 FR 62498, Oct. 31, 1979, as amended at 48 FR 37985, Aug. 22, 1983; 51 FR 16316, May 2, 1986; 52 FR 45634, Dec. 1, 1987; 54 FR 4285, Jan. 30, 1989; 54 FR 34984, Aug. 23, 1989; 55 FR 28027, July 9, 1990; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 34129, June 23, 1998; 74 FR 14667, Mar. 31, 2009; 74 FR 17907, Apr. 20, 2009]

### § 21.4202 Overcharges; restrictions on enrollments.

(a)–(b) [Reserved]

(c) *Restrictions; proprietary schools.* Enrollment will not be approved for any veteran or eligible person under the provisions of Chapter 34 or 35 respectively, in any proprietary school of which the veteran or eligible person is an official authorized to sign certificates of enrollment or monthly certificates of attendance, an owner or an officer.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13403, Sept. 23, 1967; 37 FR 6679, Apr. 1, 1972; 39 FR 43221, Dec. 11, 1974; 43 FR 35300, Aug. 9, 1978; 48 FR 37987, Aug. 22, 1983; 49 FR 5115, Feb. 10, 1984; 63 FR 35831, July 1, 1998]

### § 21.4203 Reports—requirements.

(a) *General.* All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) Except as provided in paragraph (a)(2) of this section each educational institution, veteran and eligible person shall report without delay such information on enrollment, entrance, reentrance, change in the hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved course as the Secretary may require and using a form specified by the Secretary. See paragraphs (b) through (h) of this section.

(2) An educational institution may delay in reporting the enrollment or reenrollment of a veteran or an eligible person until the end of the term, quarter, or semester when—

(i) The veteran or eligible person is enrolled in a program of independent study;

(ii) The veteran or eligible person is pursuing the program on a less than half-time basis;

(iii) The educational institution has asked the Director of the VA facility of jurisdiction in writing for permission to delay in making the report; and

(iv) The Director of the VA facility of jurisdiction has determined that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of the program.

(3) An educational institution which disagrees with a decision of a Director of a VA facility as to whether it may delay reporting enrollments or reenrollments as provided in paragraph (a)(2) of this section may ask to have that decision reviewed by the Director, Education Service. That request must be made in writing to the Director of the VA facility within one year of the date of the letter notifying the educational institution of the original decision.

(4) An educational institution which, under paragraph (a)(2) of this section, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(5) In addition, educational institutions must—

(Authority: 38 U.S.C. 3685; Pub. L. 99–576)

(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and

(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(6) Nothing in this section or in any section in 38 CFR part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Authority: 38 U.S.C. 3680(d), 3684, 3685, 3698; Pub. L. 95–202, Pub. L. 96–466; Pub. L. 99–576)

(b) *Certifications of enrollment.* All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) VA requires that educational institutions report all entrances and reentrances on a certification of enrollment.

(2) All educational institutions, regardless of the way in which they are organized, must clearly specify the course in which the veteran or eligible person is enrolled.

(3) Schools organized on a term, quarter or semester basis—

(i) May report enrollment for the term, quarter, semester, ordinary school year plus the following summer term.

(ii) May not report enrollment for a period that exceeds the ordinary school year plus the following summer term.

(iii) Must report the dates for the break between terms if—

(A) The certification covers two or more terms, and a term ends and the following term does not begin in the same or the next calendar month;

(B) The veteran or eligible person elects not to be paid for the intervals between terms;

(C) The certification covers two or more summer sessions; or

(D) The certification covers at least one summer session and at least one term which is not a standard semester or quarter.

(iv) Must submit a separate enrollment certification for each term, quarter or semester if the student—

(A) Is a veteran or eligible person pursuing a program on a less than halftime basis, or

(B) Is a serviceperson.

(Authority: 38 U.S.C. 3684(a); Pub. L. 99–576)

(v) Where a veteran or an eligible person, who is pursing a course leading to a standard college degree, transfers between consecutive school terms from one approved institution to another approved institution, for the purpose of enrolling in, and pursuing, a similar course at the second institution, the veteran or eligible person shall, for the purpose of entitlement to the payment of educational assistance allowance be considered to be enrolled at the first institution during the interval, if the interval does not exceed 30 days, following the termination date of the school term of the first institution.

(Authority: 38 U.S.C. 3680)

(c) *Nonpunitive grade.* A school may assign a nonpunitive grade for a course or subject in which the veteran or eligible person is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the school must report the assignment of the nonpunitive grade in a form specified by the Secretary in time for VA to receive it before the earlier of the following dates is reached:

(1) Thirty days from the date on which the school assigns the grade, or

(2) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(d) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or eligible person interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, this fact must be reported to VA by the school in a form specified by the Secretary.

(1) If the change in status or change in number of hours of credit of attendance occurs on a day other than one indicated by paragraph (d)(2) or (3) of this section, the school will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs. If the course in which the veteran or eligible person is enrolled does not lead to a standard college degree, and attendance must be certified for the course, the school may include the information on the monthly certification of attendance.

(Authority: 38 U.S.C. 3684(a), 1788(a); Pub. L. 99–576)

(2) If the enrollment of the veteran or eligible person has been certified by the school for more than one term, quarter or semester and the veteran or eligible person interrupts or terminates his or her training at the end of a term, quarter or semester within the certified period of enrollment, the school shall report the change in status to the Department of Veterans Affairs

in time for the Department of Veterans Affairs to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester.

(3) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the school must report the change in status or change in the number of hours of credit or attendance to the Department of Veterans Affairs in time for the Department of Veterans Affairs to receive the report within 30 days from the last date of drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 38 U.S.C. 3684(a))

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. chapter 34 or a spouse or surviving spouse is enrolled under 38 U.S.C. chapter 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible spouse's or surviving spouse's certification the number of lessons completed by the veteran, spouse or surviving spouse and serviced by the school. Such reports will be submitted quarterly in a form specified by the Secretary.

(Authority: 38 U.S.C. 3680)

(f) *Certification.* All reports required by this paragraph must be in a form specified by the Secretary.

(1) *Courses not leading to a standard college degree.* (i) Except as provided in this paragraph VA requires that a certification of attendance be submitted monthly for each veteran or eligible person enrolled in a course not leading to a standard college degree. The fact that the course may be pursued on a quarter, semester or term basis will not relieve the veteran or eligible person and the school of this requirement. Unless exempted by this paragraph this requirement also applies to courses measured on a credit-hour basis. This requirement does not apply to—

(A) Courses measured on a credit-hour basis pursuant to footnote 6 of § 21.4270(a),

(B) A course pursued on a less than one-half-time basis,

(C) A course pursued by a serviceperson while on active duty, or

(D) A correspondence course which must meet the requirements of paragraph (e) of this section.

(Authority: 38 U.S.C. 3680(a)(2), 3688(a)(7); Pub. L. 99–576)

(2) *Courses leading to a standard college degree.* Schools which have veterans or eligible persons enrolled in courses which lead to a standard college degree are not required to submit periodic certifications for students enrolled in such courses. Certifications are, however, required under paragraphs (b), (c), (d) and (h) of this section.

(3) *Apprentice or other on-the-job training.* A certification of attendance must be submitted monthly during the period of enrollment in the same manner as certifications required in paragraph (f)(1) of this section.

(g) *Flight training courses.* Where the course consists exclusively of flight training, the school will report by an endorsement on the veteran's certification the type and number of hours of actual flight training received by, and the cost thereof to, the veteran. Such reports may be submitted monthly.

(h) *Unsatisfactory progress, conduct or attendance.* At times the unsatisfactory progress, conduct or attendance of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with paragraph (d) of this section. If the veteran or eligible person continues in training despite unsatisfactory progress, conduct, or despite having failed to meet the regularly prescribed standards of attendance at the school, the school must report the fact of his or her unsatisfactory progress, conduct or attendance to VA within the time limit allowed by paragraph (h) (1) and (2) of this section.

(Authority: 38 U.S.C. 3474, 3524)

(1) A veteran's or eligible person's progress may become unsatisfactory according to the regularly prescribed standards and practices of the school as a result of the grades he or she receives The school shall report such unsatisfactory progress to VA in time for

VA to receive it before the earlier of the following dates is reached:

(i) Thirty days from the date on which the school official, who is responsible for determining whether a student is making progress, first received the final grade report which establishes that the veteran either is not progressing satisfactorily, or

(ii) Sixty days from the last day of the enrollment period during which the veteran or eligible person earned the grades that caused him or her not to meet the satisfactory progress standards.

(2) If the unsatisfactory progress, conduct or attendance of the veteran or eligible person is caused by any factors other than the grades which he or she receives, the school shall report the unsatisfactory progress, conduct or attendance to VA in time for VA to receive it within 30 days of the date on which the progress, conduct or attendance of the veteran or eligible person becomes unsatisfactory. See also § 21.4277.

(Authority: 38 U.S.C. 3474, 3524)

(Approved by the Office of Management and Budget under control number 2900–0354)

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4203, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 21.4204 Periodic certifications.

Educational assistance allowance is payable on the basis of a required certification concerning the pursuit of a course during the reporting period.

(a) *Reports by eligible persons.* An eligible person enrolled in a course which leads to a standard college degree, excepting eligible persons pursuing the course on a less than half-time basis, must verify each month his or her continued enrollment in and pursuit of his or her courses. In the case of an eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying VA of the eligible person's completion of course as scheduled or earlier termination date, will be accepted to terminate payments accordingly. Reports by other eligible persons will be submitted in accordance with § 21.4203 (e), (f) or (g).

(Authority: 38 U.S.C. 1780(g), 3103)

(b) *Requirements.* The certifications required by § 21.4203 and paragraph (a) of this section will include a report on the following items when applicable:

(1) Continued enrollment in and pursuit of the course.

(2) Conduct and progress. See § 21.4277.

(3) Date of interruption or termination of training.

(4) Changes in number of semester hours or clock hours of attendance.

(5) Any other changes or modifications in the course as certified at enrollment.

(c) *Term, quarter, or semester.* For a course which does not lead to a standard college degree, if a school organized on a term, quarter, or semester basis has reported enrollment:

(1) For the ordinary school year or the complete course, the periodic certification will show the intervals between terms, quarters, or semesters as absences.

(2) By term, quarter, or semester, the periodic certification will not cover the intervals between terms, quarters, or semesters.

(d) *Year-round courses.* The periodic certifications will show any vacation period or interval between periods of instruction as absences. The periodic certification will not cover the period between school years.

(e) *Farm cooperative courses.* The monthly certification will cover only those periods of classroom instruction which are included in the prescheduled institutional portion of the course.

(Authority: 38 U.S.C. 3684(a))

(Approved by the Office of Management and Budget under control number 2900–0465)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3452, Mar. 2, 1967; 35 FR 9816, June 16, 1970; 38 FR 14936, June 7, 1973; 39 FR 31903, Sept. 3, 1974; 41 FR 47929, Nov. 1, 1976; 49 FR 8609, Mar. 8, 1984; 54 FR 33889, Aug. 17, 1989; 54 FR 37108, Sept. 7, 1989; 57 FR 24367, June 9, 1992; 61 FR 26114, May 24, 1996]

**§ 21.4206 Reporting fee.**

VA may pay annually to each educational institution furnishing education or each joint apprenticeship training committee acting as a training establishment under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35 or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

(a) Except as provided in paragraph (b) of this section the reporting fee will be computed for each calendar year by multiplying $7.00 by the number of eligible veterans and eligible persons enrolled under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35 or 36 during that calendar year.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(b) In computing the reporting fee VA will not count a veteran or servicemember whose only receipt of educational assistance under 38 U.S.C. chapter 30 during a calendar year was tuition assistance top-up.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(c) An additional $4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of subpart F. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional $4 fee. In order to receive this fee, the institution shall submit to the Department of Veterans Affairs a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Department of Veterans Affairs. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Department of Veterans Affairs.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Department of Veterans Affairs against any liability of the educational institution for any overpayment which the Department of Veterans Affairs has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(e) Before payment of a reporting fee the Department of Veterans Affairs will require an educational institution to certify that:

(1) It has exercised reasonable diligence in determining whether it or any course offered by it approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapter 1606 of title 10 U.S.C. or chapters 30, 32, 33, 35 and 36 of title 38, U.S.C.; and

(2) It will, without delay, report any failure to meet any requirement to the Department of Veterans Affairs.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0073)

[32 FR 13404, Sept. 23, 1967, as amended at 40 FR 31762, July 29, 1975; 44 FR 62501, Oct. 31, 1979; 48 FR 37988, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 72 FR 16970, Apr. 5, 2007; 74 FR 14668, Mar. 31, 2009]

**§ 21.4209 Examination of records.**

(a) *Availability of records.* Notwithstanding any other provision of law, an educational institution, including for purposes of this section an organization or entity offering a licensing or certification test, must make the following records and accounts available to authorized Government representatives:

(1) Records and accounts pertaining to veterans or eligible persons who received educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36;

(2) Other students' records necessary for the Department of Veterans Affairs to ascertain institutional compliance with the requirements of these chapters; and

(3) The records of other individuals who took a licensing or certification test that VA believes are necessary to ascertain whether the veterans and eligible persons taking such test were reimbursed the correct amount.

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

(b) *Type of records.* Each educational institution must upon request of duly authorized representatives of the Government make available for examination all appropriate records and accounts, including but not limited to:

(1) Records and accounts which are evidence of tuition and fees charged to and received from or on behalf of all veterans, reservists, and eligible persons and from other students similarly circumstanced;

(2) Records of previous education or training of veterans, reservists, and eligible persons at the time of admission as students and records of advance credit, if any, granted by the educational institution at the time of admission;

(3) Records of the veteran's, reservists's, or eligible person's grades and progress;

(4) Records of all advertising, sales or enrollment materials as required by § 21.4252(h) and section 3696(b), title 38 U.S.C.;

(5) Records and computations showing compliance with the requirements of § 21.4201 regarding the 85–15 percent ratio of students for each course; and

(6) Records necessary to demonstrate compliance with the requirements of § 21.4252(e) pertaining to the time necessary to complete a correspondence course.

(7) Records necessary to demonstrate compliance with the requirements of § 21.4268.

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

(c) *Noncollege degree, apprentice, and other on-the-job.* The educational institution having veterans, servicemembers, reservists, and/or eligible persons enrolled in a course that does not lead to a standard college degree must make available, in addition to the records and accounts required in paragraph (b) of this section, the records of leave, absences, class cuts, makeup work, and tardiness. Each training establishment that has enrolled veterans under 38 U.S.C. chapter 30, 32, or 33, reservists under 10 U.S.C. chapter 1606, or eligible persons under 38 U.S.C. chapter 35 must also make available payroll records.

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

(d) *Nonaccredited courses.* The educational institution having veterans or eligible persons enrolled in nonaccredited courses must make available, in addition to the records and accounts required in paragraphs (b) and (c) of this section the following:

(1) Records of interruptions for unsatisfactory conduct or attendance.

(2) Records of refunds of tuition, fees and other charges made to a veteran or eligible person who fails to enter the course or withdraws or is discontinued prior to completion of the course.

(e) *Nonavailability.* Failure to make such records available as provided in this section will be grounds for discontinuing the payment of educational assistance allowance or special training allowance.

(f) *Retention of records.* (1) Except as provided in paragraph (f)(2) of this section, an educational institution must keep records and accounts, including those pertaining to students not receiving benefits from VA, as described in this section, pertaining to each period of enrollment of a veteran, reservist, or eligible person. If those records are not available electronically, the paper records must be kept intact and in good condition at the educational

institution for at least 3 years following the end of each enrollment period. If the records are stored electronically, the paper records may be stored at another site. The electronic records must be easily accessible at the educational institution for at least 3 years following the end of each enrollment period.

(2) An organization or entity offering a licensing or certification test must keep records and accounts intact and in good condition that are needed to show that veterans and eligible persons have been paid correctly for taking licensing or certification tests. The organization or entity must keep those records, at a site mutually agreed on, for at least 3 years following the date of the test.

(3) An educational institution will not be required under this section to retain records for longer than 3 years unless the educational institution receives from the Government Accountability Office or VA not later than 30 days before the end of the 3-year period a written request for longer retention.

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

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0696)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14936, June 7, 1973; 43 FR 35300, Aug. 9, 1978; 48 FR 37988, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 61 FR 26114, May 24, 1996; 72 FR 16970, Apr. 5, 2007; 74 FR 14668, Mar. 31, 2009]

### §21.4210 Suspension and discontinuance of educational assistance payments, and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview; explanation of terms used in §§21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. VA may pay educational assistance under 38 U.S.C. chapter 33 to an eligible individual or, as appropriate, to the individual's institution of higher learning on his or her behalf, for the individual's pursuit of a course or program of education if the course or program of education is offered by an institution of higher learning and approved under 38 U.S.C. chapter 30 in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36, or if an individual is entitled to be paid educational assistance to meet all or a portion of the institution of higher learning's established charges that the military department concerned has not covered by tuition assistance under 10 U.S.C. 2007(a) or (c). Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes. Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

(2) For the purposes of this section and the purposes of §§21.4211 through 21.4216, except as otherwise expressly stated to the contrary—

(i) The term ''course'' includes an apprenticeship or other on-job training program;

(ii) The term ''educational institution'' includes a training establishment, or organization or entity offering a licensing or certification test; and

(iii) Reference to action suspending, discontinuing, or otherwise denying enrollment or reenrollment means such action with respect to providing educational assistance under the chapters listed in paragraph (a)(1) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3452, 3471, 3690)

(b) *Denial of payment in individual cases.* (1) VA may deny payment of educational assistance to a specific individual for pursuit of a course or courses if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(i) The course fails to meet any of the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; or

(ii) The educational institution offering the individual's course has violated any of those requirements of law.

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

(2) VA may deny payment of educational assistance to a specific individual for taking a licensing or certification test if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(i) The test fails to meet any of the requirements of 38 U.S.C. 3689; or

(ii) The organization or entity offering the individual's test has violated any of the requirements of 38 U.S.C. 3689.

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

(c) *Notice in individual cases.* Except as provided in paragraph (e) of this section, when VA denies payment of educational assistance to an individual under paragraph (b) of this section, VA will provide concurrent written notice to the individual. The notice shall state—

(1) The adverse action;

(2) The reasons for the action; and

(3) The individual's right to an opportunity to be heard thereon in accordance with part 19 of this title.

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

(d) *Actions affecting groups.* (1) The Director of the VA Regional Processing Office of jurisdiction may:

(i) Suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(ii) Disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance); and

(iii) Suspend payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director may determine.

(2) Except as provided in paragraphs (d)(3) and (i) of this section, the decision to act as described in paragraph (d)(1) of this section must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course or taking the test receiving educational assistance to which they are not entitled because:

(i) One or more of the course approval requirements of 38 U.S.C. chapter 36 are not met, including the course approval requirements specified in §§ 21.4253, 21.4254, 21.4261, 21.4262, 21.4263, 21.4264, and 21.4268; or

(ii) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of 10 U.S.C. chapter 1606, or of 38 U.S.C. chapters 30, 32, 33, 35, and 36. These violations may include, but are not limited to, the following:

(A) Willful and knowing submission of false reports or certifications concerning students or courses of education;

(B) Failure to report to VA a veteran's, servicemember's, reservist's, or eligible person's reduction, discontinuance, or termination of education or training; or

(C) Submission of improper or incorrect reports in such number, manner, or period of time as to indicate negligence on its part, including failure to maintain an adequate reporting or recordkeeping system.

(3) The Director also may make a decision to take the action described in paragraph (d)(1) of this section when the Director has evidence that one or more prohibited assignments of benefits have occurred at an educational institution as a result of that educational institution's policy. This decision may be made regardless of whether there is a substantial pattern of erroneous payments at the educational institution. See §21.4146.

(4) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:

(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course; or

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other established charges that substantially denies to veterans, servicemembers, reservists, or other eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §21.4138(a), §21.7140(a), §21.7640(d), or §21.9680; or

(iii) Has used erroneous, deceptive, or misleading practices as set forth in §21.4252(h).

(Authority: 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) *Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution.* (1) The Director of the VA Regional Processing Office of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:

(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and

(ii) The educational institution—

(A) Refuses to take corrective action; or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:

(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action;

(ii) Give the reasons why the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments; and

(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments.

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

(3) If VA receives a claim for educational assistance for the taking by an individual of a licensing or certification test, and the individual took the licensing or certification test during a period when payment for taking such test was suspended, the Director will inform the individual in writing of the fact of the suspension and the reasons why payments were suspended.

(Authority: 38 U.S.C. 3689, 3690)

(f) *Actions in cases indicating submission of false, misleading, or fraudulent claims or statements.* The Director of the VA Regional Processing Office of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801–3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Director will follow the procedures in part 42 of this title.

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(g) *Referral to the Committee on Educational Allowances.* The Director of the VA Regional Processing Office of jurisdiction will refer the following matters to the Committee on Educational Allowances as provided in § 21.4212:

(1) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(2) A disapproval under paragraph (d) of this section of all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance); and

(3) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director has determined.

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

(h) *Withdrawal of referral to Committee on Educational Allowances.* (1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA Regional Processing Office of jurisdiction determines that the conditions which justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course(s) or test(s), the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn.

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

(i) *This section does not apply to disapproval of courses based on conflicts of interests.* VA will disapprove courses when required by § 21.4005(d) without applying the provisions of paragraphs (a) through (h) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3683(b))

[63 FR 35831, July 1, 1998, as amended at 72 FR 16971, Apr. 5, 2007; 74 FR 14668, Mar. 31, 2009]

**§21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.**

(a) *Authority.* (1) 38 U.S.C. 3690 authorizes VA to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that:

(i) The program of education or course in which such individuals are enrolled fails to meet a requirement of 38 U.S.C. chapter 30, 32, 33, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part; or

(ii) An educational institution has violated any such statute or regulation, or fails to meet such a statutory or regulatory requirement.

(2) This authority does not extend to enrollments and reenrollments of individuals seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance.

(3) 38 U.S.C. 3689 and 3690 further authorize VA to deny payment to servicemembers or veterans for licensing or certification tests when VA finds that either the test or the organization or entity offering the test fails to meet a requirement of 38 U.S.C. 3689 or the applicable regulations of this part.

(4) Sections 21.4210 through 21.4216 implement the authority discussed in paragraphs (a)(1) and (a)(3) of this section.

(5) Each VA Regional Processing Office shall have a Committee on Educational Allowances. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines. The Committee's findings of fact and recommendations will be provided to the Director of the VA Regional Processing Office.

(6) The Secretary of Veterans Affairs delegates to each Director of a VA Regional Processing Office the authority to suspend or discontinue payment of educational benefits, to disapprove enrollments or reenrollments, or to deny payment of benefits for tests.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(b) *Purpose.* (1) The Committee on Educational Allowances is established to assist the Director of the VA Regional Processing Office of jurisdiction in deciding in a specific case whether—

(i) Educational assistance should be discontinued to all individuals enrolled in any course or courses an educational institution offers; and

(ii) If appropriate, whether approval of all further enrollments or reenrollments in the course or courses an educational institution offers should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs VA administers; or

(iii) Payment should be denied to all servicemembers and veterans for taking a specific licensing or certification test.

(2) A Director's decision described in paragraph (b)(1) of this section must be based on a finding that the educational institution is not meeting, or has violated, a requirement of 38 U.S.C. chapter 30, 32, 33, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part.

(3) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments. Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to 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 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 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 educational institution will be advised of its right to present any evidence, relevant to the issues submitted for the Committee's review, by oral or documentary evidence; to submit rebuttal evidence; to present and cross-examine

witnesses; and to make such statements as may be appropriate on its behalf for a true and full disclosure of the facts. VA Counsel will be allowed to cross-examine any witnesses offered by the educational institution and to reply to any written briefs or arguments submitted to the Committee.

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

(c) *Rule 3.* Any testimony or evidence, either oral or written, which the Committee on Educational Allowances deems to be of probative value in deciding the question at issue will be admitted in evidence. While irrelevant, immaterial, or unduly repetitious evidence, testimony, or arguments should be excluded, reasonable latitude will be permitted with respect to the relevancy, materiality, and competency of evidence. In most instances the evidence will consist of official records of the educational institution and VA, and these documents may be attested to and introduced by affidavit; but the introduction of oral testimony by the educational institution or by VA will be allowed, as appropriate, in any instance where the educational institution or VA Counsel desires. VA, however, will neither subpoena any witness on behalf of the educational institution for such purposes nor bear any expenses in connection with the appearance of such witness. In instances where the evidence reasonably available consists of signed written statements, secondary or hearsay evidence, etc., such evidence may be introduced into the record and will be given the weight and consideration which the circumstances warrant.

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

(d) *Rule 4.* A verbatim stenographic or recorded transcript of the hearing will be made. This transcript will become a permanent part of the record, and a copy will be furnished to the educational institution and the VA Counsel at the conclusion of the proceeding, unless furnishing of the copy of the transcript is waived by the educational institution.

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

(e) *Rule 5.* The Chairperson of the Committee on Educational Allowances will identify all exhibits in the order of introduction or receipt (numerically for VA exhibits and alphabetically for exhibits introduced by the educational institution). All such original exhibits or documents shall be attached to the original of the transcript. VA shall make photocopies or certified copies and attach them to the copy of the transcript furnished to the educational institution and the VA Counsel. The original transcript will accompany the Committee's recommendation to the Director of the VA Regional Processing Office of jurisdiction along with all exhibits, briefs, or written statements received by the Committee during the course of the proceedings. Such documents should be clearly marked to indicate which were received into evidence and relied upon by the Committee in making its recommendations.

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

(f) *Rule 6.* The Committee on Educational Allowances, at its discretion, may reasonably limit the number of persons appearing at the hearing, including any affected individuals presented 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)

(g) *Rule 7.* Any person who is presented to testify will be required to be duly placed under oath or affirmation by the Chairperson of the Committee on Educational Allowances. If an official of the educational institution desires to present a statement personally, the individual will be required to be placed under oath or affirmation. The Chairperson will advise each witness that the Committee understands that he or she is voluntarily appearing before the Committee; that any testimony or statement given will be considered as being completely voluntary;

and that no one has authority to require the individual to make any statement or answer any question against his or her will before the Committee, except that a person called as a witness on behalf of either VA or the educational institution must be willing to submit to cross-examination with respect to testimony given. Each witness will also be advised that his or her testimony or statement, if false, even though voluntary, may subject him or her to prosecution under Federal statutes.

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

(h) *Rule 8*. Any member of the Committee on Educational Allowances may question any witness presented to testify at the hearing or either a representative of the educational institution or the VA Counsel concerning matters that are relevant to the question at issue. Generally, questioning by a Committee member will be limited to the extent of clarifying information on the facts and issues involved.

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

(i) *Rule 9*. If the educational institution fails to timely notify the Committee of its intent to participate in a hearing or if a representative of the educational institution is scheduled to appear for a hearing but, without good cause, fails to appear either in person or by writing, the Committee will proceed with the hearing and will review the case on the basis of the evidence of record which shall be presented by the VA Counsel.

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

(j) *Rule 10*. Any objection by an authorized representative of the educational institution or the VA Counsel on a ruling by the Chairperson of the Committee on Educational Allowances regarding the admissibility of testimony or other evidence submitted will be made a matter of record, together with the substance in brief of the testimony intended or other evidence concerned. If the other evidence concerned is in the form of an affidavit or other document, it may be accepted for filing as a future reference if it is later ruled admissible as part of the record of the hearing.

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

(k) *Rule 11*. Objections relating to the jurisdiction or membership of the Committee on Educational Allowances or the constitutionality of statutes or the constitutionality of, or statutory authority for, VA regulations, are not before the Committee for decision. The time of the Committee will not be used to hear arguments in this regard. However, any such matters outside the province of the Committee may be the subject of a brief or a letter for consideration by the VA Office of General Counsel upon completion of the hearing. The ruling of such authority upon such issues will be obtained and included in the record before the Committee's recommendations are submitted to the Director of the VA Regional Processing Office of jurisdiction. If the VA General Counsel's ruling on such legal issues necessitates reopening the proceeding, that shall be done before the Committee makes its recommendations to the Director of the VA Regional Processing Office of jurisdiction.

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

(l) *Rule 12*. The hearing will be open to the public.

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

(m) *Rule 13*. The hearing will be conducted in an orderly manner with dignity and decorum. The conduct of members of the Committee on Educational Allowances, the VA Counsel, and any representatives of the educational institution shall be characterized by appropriate impartiality, fairness, and cooperation. The Chairperson of the Committee shall take such action as may be necessary, including suspension of the hearing or the removal of the offending person from the hearing room for misbehavior, disorderly conduct, or the persistent disregard of the Chairperson's ruling. Where this occurs, the Chairperson will

point out that the Committee is entitled to every possible consideration in order that the case may be presented clearly and fully, which may be accomplished only through observance of orderly procedures.

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

(n) *Rule 14*. The Chairperson of the Committee on Educational Allowances will conduct the hearing proceedings in such a manner that will protect from disclosure information which tends to disclose or compromise investigative sources or methods or which would violate the privacy of any individual. The salient facts, which form the basis of charges, may be disclosed and discussed without revealing the source.

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

(o) *Rule 15*. At the close of the hearing, the Chairperson of the Committee on Educational Allowances shall inform the appropriate representative of the educational institution that the arguments and the evidence presented will be given careful consideration; and that notice of the decision of the Director of the VA Regional Processing Office of jurisdiction, together with the Committee's recommendations, will be furnished to the educational institution and the VA Counsel at the earliest possible time. The Chairperson will also indicate that notice of the Director's decision will be published in the FEDERAL REGISTER for the information of all other interested persons.

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

(p) *Rule 16*. In making its findings of facts and recommendations, the Committee on Educational Allowances will consider only questions which are referred to it by the Director of the VA Regional Processing Office of jurisdiction as being at issue and which are within the jurisdiction of the Committee.

(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]

## § 21.4215 Decision of Director of VA Regional Processing Office of jurisdiction.

(a) *Decision*. The Director of the VA Regional Processing Office of jurisdiction will render a written decision on the issue or issues of discontinuance or denial that were the subject of the Committee on Educational Allowances proceedings.

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

(b) *Basis of decision*. (1) The decision of the Director of the VA Regional Processing Office of jurisdiction will be based upon all admissible evidence of record, including—

(i) The recommendations of the Committee on Educational Allowances;

(ii) The hearing transcript and the documents admitted in evidence; and

(iii) The ruling on legal issues referred to appropriate authority.

(2) The decision will clearly describe the evidence and state the facts on which the decision is based and, in the event that the decision differs from the recommendations of the Committee on Educational Allowances, will give the reasons and facts relied upon by the Director in deciding not to follow the Committee majority's recommendations.

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

(c) *Correction of deficiencies*. If the Director of the VA Regional Processing Office of jurisdiction believes that the record provided for review is incomplete or for any reason should be reopened, before rendering a decision he or she will order VA staff to gather any additional necessary evidence and will notify the educational institution that it may comment upon the new evidence added. The Director will then notify the educational institution as to whether the matter will be resubmitted to the Committee on Educational Allowances for further proceedings, on the basis of the new circumstances. If the matter is referred back to the Committee, the Director will defer a decision until he or she has received the Committee's new recommendations

based upon all of the evidence of record.

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

(d) *Effective date*. If the decision of the Director of the VA Regional Processing Office of jurisdiction is adverse to the educational institution, the decision shall indicate specifically the effective date of each adverse action covered by the decision.

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

(e) *Notification of decision*. (1) The Director of the VA Regional Processing Office of jurisdiction shall send a copy of the decision to the educational institution by certified mail, return receipt requested. A copy of the decision also will be provided by regular mail to the institution's legal representative of record, if any. If the decision is adverse to the educational institution, the Director will enclose a notice of the educational institution's right to have the Director, Education Service review the decision.

(2) The Director of the VA Regional Processing Office of jurisdiction will also send a copy of the decision to:

(i) The State approving agency; and

(ii) VA Counsel.

(3) The Director of the VA Regional Processing Office of jurisdiction shall post a copy of the decision at the VA Regional Processing Office of jurisdiction. A copy of the decision shall be published in the FEDERAL REGISTER.

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

[63 FR 35836, July 1, 1998, as amended at 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

### § 21.4216 Review of decision of Director of VA Regional Processing Office of jurisdiction.

(a) *Decision is subject to review by the Director, Education Service*. At the request of the educational institution the Director, Education Service will review a decision of a Director of a VA Regional Processing Office of jurisdiction to discontinue payments; to disapprove new enrollments or reenrollments; or to deny payment of benefits for licensing or certification tests. This review will be based on the evidence of record when the Director of the VA Regional Processing Office of jurisdiction made that decision. It will not be *de novo* in nature and no hearing on the issue will be held. When reviewing a decision to deny payment for licensing or certification tests, the Director, Education Service may seek the advice of the Professional Certification and Licensure Advisory Committee established under 38 U.S.C. 3689(e).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

(b) *Authority of Director, Education Service*. The Director, Education Service has the authority to affirm, reverse, or remand the original decision. In the case of such a review, the reviewing official's decision, other than a remand, shall become the final Department decision on the issue presented.

(c) *Notice of decision of Director, Education Service is required*. Notice of the reviewing official's decision will be provided to the interested parties and published in the FEDERAL REGISTER, in the same manner as is provided in § 21.4215(e) for decisions of the Director of the VA Regional Processing Office of jurisdiction, for the information of all concerned.

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

[63 FR 35836, July 1, 1998, as amended at 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

## PROGRAMS OF EDUCATION

### § 21.4232 Specialized vocational training—38 U.S.C. Chapter 35.

(a) *Eligibility requirements for specialized vocational training*. (1) The Department of Veterans Affairs may provide a program of a specialized course of vocational training to an eligible person who:

(i) Is not in need of special restorative training, and

(ii) Requires specialized vocational training because of a mental or physical handicap.

(2) The counseling psychologist will:

(i) After consulting with the Vocational Rehabilation Panel, determine whether such a course is in the best interest of the eligible person; and

(ii) Deny the application for the program when the course is not in the eligible person's best interest.

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the counseling psychologist has previously determined that the course is in the eligible person's best interest.

(Authority: 38 U.S.C. 3521, 3536; Pub. L. 99–576)

(4) The Department of Veterans Affairs may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday at the time training is to begin.

(Authority: 38 U.S.C. 3536)

(b) *Program objective*. The objective of a program of specialized vocational training will be designated as a vocational objective.

(c) *Special assistance*. When needed, special assistance will be provided under § 21.4276.

(d) *Length of specialized vocational training*. When the program of specialized vocational training will exceed 45 months, the counseling psychologist will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval.

(Authority: 38 U.S.C. 3543(b))

[48 FR 37989, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 54 FR 33889, Aug. 17, 1989]

### § 21.4233 Combination.

An approved program may consist of a combination of courses with instruction offered by a school alternating with instruction in a business or industrial establishment (a cooperative course); courses offered by two schools concurrently; or courses offered through class attendance and by television concurrently. A farm cooperative program may be approved which consists of a combination of institutional agricultural courses and concurrent agricultural employment (see § 21.4264). A school may contract the actual training to another school or entity, provided the course is approved by the State approving agency having approval jurisdiction of the school or entity which actually provides the training.

(a) *Cooperative courses*. A full-time program of education consisting of phases of school instruction alternated with training in a business or industrial establishment with such training being strictly supplemental to the school instruction may be approved. Alternating periods may be a part-day in school and a part-day on job or may be such periods which alternate on a daily, weekly, monthly or on a term basis. For purposes of approval the school offering the course must submit to the State approving agency, with its application, statements of fact showing at least the following:

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270(c) of this part. The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

(Authority: 38 U.S.C. 3482(a)(2) and 3532(b))

(2) That the course is set up as a cooperative course in the school catalog or other literature of the school;

(3) That the school itself arranges with the employer's establishment for providing the alternate on-job periods of training on such basis that the on-job portion of the course will be training in a real and substantial sense and will supplement the in-school portion of the course;

(4) That the school arranges directly with the employer's establishment for

placing the individual student in that establishment and exercises supervision and control over the student's activities at the establishment to an extent that assures training in a true sense to the student; and

(5) That the school grants credit for the on-job portion of the course for completion of a part of the work required for granting a degree or diploma.

(Authority: 38 U.S.C. 3482(a)(2) and 3532(b))

(b) *Concurrent enrollment.* Where a veteran or eligible person cannot successfully schedule his or her complete program at one school, a program of concurrent enrollment may be approved. When requesting such a program the veteran or eligible person must show that his or her complete program of education or training is not available at the school in which he or she will pursue the major portion of his or her program (the primary school), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program.

(1) If VA measures the courses pursued at both institutions on either a clock-hour basis or a credit-hour basis, VA will measure the veteran's or eligible person's enrollment by adding together the units of measurement in the second school to the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution.

(2) Where the standards for measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's or eligible person's enrollment by converting the units of measurement for courses in the second school to the equivalent in value expressed in units of measurement required for the courses in the program of education which the veteran or eligible person is pursuing at the primary institution.

(Authority: 38 U.S.C. 3688)

(3) If the provisions of paragraph (b)(2) of this section require VA to convert clock hours to credit hours, it will do so by—

(i) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(ii) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(3)(i) of this section. VA will drop all fractional hours.

(4) If the provisions of paragraph (b)(2) of this section require VA to convert credit hours to clock hours, it will do so by—

(i) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(ii) Multiplying each credit hour by the number determined in paragraph (b)(4)(i) of this section. VA will drop all fractional hours.

(5) Periodic certifications of training will be required from the veteran and each of the schools where concurrent enrollment is approved in a course which does not lead to a standard college degree and to which the measurement provisions of § 21.4270(b), of this part do not apply. (See §§ 21.4203 and 21.4204.)

(Authority: 38 U.S.C. 3688)

(c) *Television.* (1) A course offered by open-circuit television is an independent study course. In order for an eligible person to receive educational assistance while pursuing such a course, the course must meet all the requirements for independent study found in § 21.4267.

(Authority: 38 U.S.C. 3523, 3680A)

(2) *Closed circuit telecast.* Instruction offered through closed circuit telecast which requires regular classroom attendance is to be recognized to the same extent as regular classroom and/or laboratory instruction.

(d) *Farm cooperative course.* A program of education consisting of institutional agricultural courses pursued

by an eligible person who is concurrently engaged in agricultural employment which is relevant to such institutional course may be approved if the course meets the requirements of § 21.4264.

(e) *Contract.* All or part of the program of education of a school may be provided by another school or entity under contract. Such school or entity actually providing the training must obtain approval of the course from the State approving agency in the State having jurisdiction of that school or entity. If the course is a course of flight training, the school or entity actually providing the training must also obtain approval of the course from the Federal Aviation Administration. Measurement of the course and payment of an allowance will be appropriate for the course as offered by the school or entity actually providing the training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3241(b), 3323(a), 3452(c), 3501(a)(6), 3675, 3676)

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4233, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 21.4234 Change of program.

(a) *Definition.* (1) Except as provided in paragraph (a)(2) of this section, a change of program consists of a change in the educational, professional, or vocational objective for which the veteran, reservist, or eligible person entered training.

(2) VA does not consider any of the following to be changes of program:

(i) A change in the type of courses needed to attain a vocational objective;

(ii) A change in the individual's educational, professional or vocational objective following the successful completion of the immediately preceding program of education;

(iii) A return to the individual's prior program of education following a change of program if the individual resumes training in the program without any loss of credit or standing in that program;

(iv) An enrollment in a new program of education when that program leads to a vocational, educational or professional objective in the same general field as the immediately preceding program of education; or

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(v) An enrollment or reenrollment of a servicemember seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(b) *Application.* A veteran, reservist, or eligible person may request a change of program by any form of communication. However, if the veteran, reservist, or eligible person does not furnish sufficient information to allow the Department of Veterans Affairs to process the request, the Department of Veterans Affairs will furnish the prescribed form for a change of program to him or her for completion.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(c) *Optional change of program.* A spouse or surviving spouse eligible to receive educational assistance under 38 U.S.C. chapter 35 may make one optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect, or lack of application.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(d) *Other changes of program.* (1) The following changes of program may not be made solely at the option of the veteran, reservist, or eligible person. The Department of Veterans Affairs must approve them before paying educational assistance allowance:

(i) A second or subsequent change of program made by a veteran or eligible person other than a child receiving educational assistance under 38 U.S.C. chapter 35,

(ii) An initial change of program made by a veteran or eligible spouse or surviving spouse if the first program was interrupted or discontinued due to his or her own misconduct, neglect or lack of application, or

(iii) Any change of program made by a child receiving educational assistance under 38 U.S.C. chapter 35.

(2) The Department of Veterans Affairs will approve a change of program listed in paragraph (d)(1) of this section if:

(i) The program of education which the veteran, reservist, or eligible person proposes to pursue is suitable to his or her aptitudes, interests and abilities,

(ii) In any instance where the veteran, reservist, or eligible person has interrupted, or failed to progress in his or her program due to his or her own misconduct, neglect or lack of application, there is a reasonable likelihood with respect to the program the veteran, reservist, or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress, and

(iii) In the case of an eligible child receiving educational assistance under 38 U.S.C. chapter 35 the new program meets the criteria applicable to final approval of an original application. See § 21.4230.

(3) The Department of Veterans Affairs may approve a third or subsequent change of program if applicable conditions of paragraph (d)(2) of this section are met and the additional change or changes are necessitated by circumstances beyond the control of the veteran, reservist, or eligible person. Circumstances beyond the control of the veteran, reservist, or eligible person include, but are not limited to:

(i) The course being discontinued by the school when no other similar course leading to the same objective is available within normal commuting distance.

(ii) Unexpected financial difficulties preventing completion of the last program because of the overall cost of the program needed to reach the objective, or

(iii) The veteran, reservist, or eligible person being required to relocate because of health reasons in an area where training for the last objective is not available within normal commuting distance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(e) *Adjustments; transfers*. A change in courses or places of training will not be considered a change of objective in the following instances:

(1) The pursuit of the first program is a prerequisite for entrance into and pursuit of a second program.

(2) A transfer from one school to another when the program at the second school leads to the same educational, professional or vocational objective, and does not involve a material loss of credit, or increase training time.

(3) Revision of a program which does not involve a change of objective or material loss of credit nor loss of time originally planned for completion of the veteran's or eligible person's program. For example, an eligible person enrolled for a bachelor of science degree may show a professional objective such as chemist, teacher or engineer. His or her objective for purposes of this paragraph shall be considered to be ''bachelor degree'' and any change of courses will be considered only an adjustment in the program, not a change, so long as the subjects he or she pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree.

(Authority: 10 U.S.C. 510(h), 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

CROSS REFERENCE: *Counseling.* See § 21.4100.

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0074 and 2900–0099)

[31 FR 6774, May 6, 1966, as amended at 34 FR 845, Jan. 18, 1969; 39 FR 34036, Sept. 23, 1974; 39 FR 45237, Dec. 31, 1974; 45 FR 67093, Oct. 9, 1980; 57 FR 29027, June 30, 1992; 57 FR 40614, Sept. 4, 1992; 60 FR 32272, June 21, 1995; 61 FR 6783, Feb. 22, 1996; 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

### § 21.4235 Programs of education that include flight training.

VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See § 21.4263 for approval of flight courses for VA training.

(a) *Eligibility.* A veteran or servicemember who is otherwise eligible to receive educational assistance under 38 U.S.C. chapter 30 or 32, or a reservist who is eligible for expanded benefits under 10 U.S.C. chapter 1606 as provided in § 21.7540(b), may receive educational assistance for flight training in an approved course provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (f) of this section, the individual must—

(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) If enrolled in a course other than an Airline Transport Pilot (ATP) course, hold a second-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(b) *Approval of program.* VA may approve the individual's program of education as described on the individual's application if:

(1) The flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; and

(2) The flight training included in the program—

(i) Is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(ii) Is given by an educational institution of higher learning for credit toward a standard college degree that the individual is pursuing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(c) *Pursuit of flight courses.* (1) VA will pay educational assistance to an eligible individual for an enrollment in a commercial pilot certification course leading to Federal Aviation Administration certification for a particular category even if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for a different category, since each category represents a different vocational objective.

(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the Federal Aviation Administration for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since that rating equally may be applied to an individual's private pilot certificate, only evidencing an intent to pursue a non-vocational objective.

(3) VA will pay educational assistance to an eligible individual for an enrollment in a flight course other than an instrument rating course or a ground instructor course, including

courses leading to an aircraft type rating, only if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for the category to which the particular course applies.

(4) VA will pay educational assistance to an eligible individual for an enrollment in a ground instructor certificate course, even though the individual does not have any other flight certificate issued by the Federal Aviation Administration, since the Federal Aviation Administration does not require a flight certificate as a prerequisite to ground instructor certification and ground instructor is a recognized vocational objective.

(5) VA will not pay an eligible individual for simultaneous enrollment in more than one flight course, except as provided in paragraph (c)(2) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(d) *Some individuals are already qualified for a flight course objective.* (1) The provisions of §§ 21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4))

(e) *Some flight courses are refresher training.* The provisions of §§ 21.5230(c), 21.7020(b)(26), 21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation Administration may have canceled it. The individual may receive the equivalent of the number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.

(2) A reservist is not eligible for refresher training unless he or she has had prior active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

(f) *Flight training at an institution of higher learning.* (1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 is exempt from the provisions of paragraphs (a)(2) through (d) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.

(2) An individual described in paragraph (f)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

[63 FR 34129, June 23, 1998, as amended at 65 FR 12118, Mar. 8, 2000]

### § 21.4236 Tutorial assistance.

(a) *Enrollment.* A veteran or eligible person may receive supplemental monetary assistance to provide tutorial services if he or she:

(1) Is pursuing a post-secondary educational program on a half-time or more basis at an educational institution, and

(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(b) *Approval.* The Department of Veterans Affairs will grant approval when:

(1) The educational institution certifies that:

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected:

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

(c) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed $100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed $1200.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

(d) *Entitlement charge.* VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

[48 FR 37989, Aug. 22, 1983, as amended at 50 FR 19935, May 13, 1985; 55 FR 28027, July 9, 1990; 61 FR 26114, May 24, 1996; 74 FR 14670, Mar. 31, 2009]

COURSES

### § 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) *General.* The statements made in this paragraph are subject to exceptions found in paragraph (c) of this section.

(1) If an educational institution offers a resident course in a State, only the State approving agency for the State where the course is being offered may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(2) If an educational institution with a main campus in a State offers a resident course not located in a State, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course by independent study or by correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

(4) If a training establishment offers a program of apprenticeship or other on-job training, only the State approving agency for the State where the training will take place may approve the course for VA training.

(5) Except as provided in paragraph (a)(6)(ii) of this section, if a State or political subdivision of a State offers a licensing test, only the State approving agency for the State where the license will be valid may approve the test for VA payment.

(6)(i) If an organization or entity offers a licensing or certification test and applies for approval of that test, only the State approving agency for the State where the organization or entity has its headquarters may approve the test and the organization or entity offering the test for VA payment. This approval will be valid wherever the test is given.

(ii) If the organization or entity offering a licensing or certification test does not apply for approval, and a State or political subdivision of a State

requires that an individual take the test in order to obtain a license, the State approving agency for the State where the license will be valid may approve the test for VA payment. This approval will be valid for the purpose of VA payment only if the veteran takes the test in the State or political subdivision of the State where the license is valid.

(7) A course approved under 38 U.S.C. chapter 36 will be deemed to be approved for purposes of 38 U.S.C. chapter 35.

(8) Any course that was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 before March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters, will be deemed to be approved for purposes of 38 U.S.C. chapter 36.

(9) VA may make tuition assistance top-up payments of educational assistance to an individual to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance, even though a State approving agency has not approved the course in which the individual was enrolled.

(Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

(b) *State approving agencies.* Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. Chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) *Notice of approval.* (i) Each State approving agency must provide to VA:

(A) A list of schools specifying which courses it has approved;

(B) A list of licensing and certification tests and organizations and entities offering these tests that it has approved; and

(C) Any other information that it and VA may determine to be necessary.

(ii) The lists and information must be provided on paper or electronically as VA may require.

(2) *Notice of suspension of approval or disapproval.* Each State approving agency will notify the Department of Veterans Affairs of the suspension of approval or disapproval of any course or licensing or certification test previously approved and will set forth the reasons for such suspension of approval or disapproval. See §21.4259.

(Authority: 38 U.S.C. 3672(a))

(3) *Failure to act.* If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Department of Veterans Affairs.

(c) *Department of Veterans Affairs approval.* (1) The Director, Vocational Rehabilitation and Employment Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under 38 U.S.C. chapter 35.

(2) The Director, Education Service may approve—

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36 offered by a school located in the Canal Zone, Guam or Samoa;

(iii) Except as provided in §21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36;

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of Title 29 U.S.C. as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State; and

(vi) Any licensing or certification test and any organization or entity offering such a test if—

(A) The organization or entity is an agency of the Federal government;

(B) The headquarters of the organization or entity offering the test is not located in a State; or

(C) The State approving agency that would, under paragraph (a)(5) or (a)(6) of this section, have approval jurisdiction for the test has declined to perform the approval function for licensing or certification tests and the organizations or entities offering these tests.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

CROSS REFERENCE: *Designation*. See § 21.4150.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051)

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 41 FR 30640, July 26, 1976; 44 FR 54707, Sept. 21, 1979; 48 FR 37990, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 62 FR 55760, Oct. 28, 1997; 72 FR 16973, Apr. 5, 2007; 74 FR 14670, Mar. 31, 2009]

### § 21.4251 Minimum period of operation requirement for educational institutions.

The provisions of this section do not apply to licensing or certification tests or to the organizations or entities offering those tests. For information on the minimum period of operation requirement that applies to licensing or certification tests, see § 21.4268.

(a) *Definitions*. The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control*. The term *control* (including the term controlling) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person*. The term *person* means an individual, corporation, partnership, or other legal entity.

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

(b) *Some educational institutions must be in operation for 2 years*. Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than 2 years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement*. Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years*. VA will consider, for the purposes of paragraph (b) of this section, that a proprietary educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

(Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality*. A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, *i.e.*, 55 miles or more from the original location.

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

(f) *Change of ownership*. (1) A change of ownership of a proprietary educational institution occurs when—

(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or

(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

(i) The sale of the educational institution;

(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;

(iii) The merger of 2 or more educational institutions; and

(iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.

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

(g) *Substantially the same faculty, student body, and courses*. VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))

[65 FR 81741, Dec. 27, 2000, as amended at 72 FR 16974, Apr. 5, 2007]

### § 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

(a) *Bartending and personality development*. Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b)(1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Department of Veterans Affairs determines to be avocational or recreational.

(Authority: 38 U.S.C. 3523(a), 3680A(b))

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(c) *Flight training.* The Department of Veterans Affairs may approve an enrollment in any of the following types of courses of flight training if an institution of higher learning offers the course for credit toward the standard college degree the veteran or eligible person is pursuing. The Department of Veterans Affairs otherwise will not approve an enrollment in:

(1) A course of flight training to obtain a private pilot's license or equivalent level training; or

(2) Any course of flight training under Chapter 35.

(Authority: 10 U.S.C. 16131(f); 38 U.S.C. 3034, 3241(b), 3323(a), 3523(b), 3680A(b))

(d) *Courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.* (1) VA will not approve the enrollment of an individual under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapter 30, 32, or 35 in a correspondence course or the correspondence portion of a correspondence-residence course unless the course is accredited and meets the requirements of §§ 21.4253, 21.4256, and 21.4279, as appropriate.

(2) VA will not approve the enrollment of an eligible child under 38 U.S.C. Chapter 35 in a correspondence course or the correspondence portion of a correspondence-residence course.

(Authority: 38 U.S.C. 3534(b))

(f) *Alternative teacher certification program.* VA will not approve the enrollment of an eligible person under 38 U.S.C. Chapter 35 in an alternative teacher certification program unless that program is offered by an institution of higher learning as defined in § 21.4200(h).

(Authority: 38 U.S.C. 3452(c), 3501(a)(6))

(g) *Independent study.* (1) Effective October 29, 1992, VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran to complete his or her program of education; and the veteran—

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(B) Has remained continuously enrolled in that program of education from October 29, 1992, to the date the veteran enrolls in the nonaccredited independent study course or unit subject; or

(ii) Was enrolled in and receiving educational assistance for the nonaccredited independent study course or unit subject on October 29, 1992, and remains continuously enrolled in that course or unit subject.

(2) Whether or not the veteran is enrolled will be determined by the regularly prescribed standards and practices of the educational institution.

(Authority: 38 U.S.C. 3680A; sec. 313(b), Pub. L. 102–568, 106 Stat. 4331–4332)

(h) *Erroneous, deceptive, or misleading practices.* For the purposes of this paragraph, ''educational institution'' includes an organization or entity offering licensing or certification tests.

(1) If an educational institution uses advertising, sales, enrollment practices, or candidate handbooks that are erroneous, deceptive, or misleading by actual statement, omission, or intimation, VA will not approve:

(i) An enrollment in any course such an educational institution offers; and

(ii) Payment of educational assistance as reimbursement to a veteran or eligible person for taking a licensing or certification test that the educational institution offers.

(2) VA will use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:

(i) To carry out investigations; and

(ii) To decide whether an educational institution uses advertising, sales, or enrollment practices, or candidate handbooks, described in paragraph (h)(1) of this section.

(3) Any educational institution offering courses approved for the enrollment of veterans, reservists, and/or eligible persons, or offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who take the tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks (and copies of each) that the educational institution or its agents have used during the preceding 12-month period. The State approving agency and VA may inspect this record. The materials in this record shall include but are not limited to:

(i) Any direct mail pieces,

(ii) Brochures,

(iii) Printed literature used by sales people,

(iv) Films, video cassettes and audio tapes disseminated through broadcast media,

(v) Material disseminated through print media,

(vi) Tear sheets,

(vii) Leaflets,

(viii) Handbills,

(ix) Fliers, and

(x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution.

(Authority: 38 U.S.C. 3689, 3696)

(i) *Audited courses.* The school's certifications shall exclude courses which are being audited by the veteran or eligible person, since no educational assistance allowances shall be paid for such courses.

(Authority: 38 U.S.C. 3680(a))

(j) *Nonpunitive graded courses.* The school shall report any course for which a nonpunitive grade is assigned and no payment shall be authorized for such a course. If payment has already been made, in whole or in part, by the Department of Veterans Affairs at the time the grade is assigned, an overpayment shall be created against the account of the student for such a course, unless the Department of Veterans Affairs determines there are mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(k) *Courses with suspended approval.* When a State approving agency has suspended the approval of a course for new enrollments, new enrollments in the course shall not be approved until the suspense is lifted. If the State approving agency does not lift the suspense, but disapproves the course instead, new enrollments beginning on or after the date the suspense was effective shall not be approved. See §21.4259.

(Authority: 38 U.S.C. 3672(a))

(l) *Courses taken by a nonmatriculated student who is pursuing a degree.* The provisions of this paragraph apply to veterans and eligible persons who are pursuing a degree, but who have not matriculated. The Department of Veterans Affairs considers a student to

have matriculated when he or she has been formally admitted to a college or university as a degree-seeking student.

(1) Some colleges or universities admit students provisionally, pending receipt of test results or transcripts. The Department of Veterans Affairs may approve such a veteran's or eligible person's enrollment in a course or subject only if the veteran or eligible person matriculates during the first two terms, quarters or semesters following his or her admission.

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at the college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student. If the student is not required to matriculate during the portion of the program offered at the first college or university, VA may approve an enrollment in a course or subject that is part of that portion of the program only when the certifications described in either paragraph (l)(2)(i) or (ii) of this section are made.

(i) The college or university granting the degree certifies concurrently with the student's enrollment in the first portion of the program, that

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;

(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;

(C) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;

(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(ii) The college or university offering the first part of the program:

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an associate or higher degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (l)(3)(i) or (ii) of this section are made.

(i) The college or university granting the baccalaureate degree certifies that:

(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,

(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(ii) Either the 2-year college or the college or university granting the baccalaureate degree:

(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made

once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person is enrolled in courses covered by the agreement.

(4) Except as provided in paragraphs (l)(1), (2), and (3) of this section, the Department of Veterans Affairs will not approve a veteran's or eligible person's enrollment in a course or subject if the veteran or eligible person:

(i) Is pursuing a degree, and

(ii) Is not matriculated.

(5) Nothing in this paragraph shall prevent a State approving agency from including more restrictive matriculation requirements in its approval criteria.

(Authority: 38 U.S.C. 3452)

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by § 21.4253, § 21.4254, § 21.4256, § 21.4257, § 21.4260, § 21.4261, § 21.4263, § 21.4264, § 21.4265, § 21.4266, or § 21.4267, as appropriate.

(Authority: 38 U.S.C. 3680A(f) and (g))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0073, 2900–0156, and 2900–0682)

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 35 FR 9817, June 16, 1970; 40 FR 31763, July 29, 1975; 43 FR 35302, Aug. 9, 1978; 45 FR 31063, June 12, 1980; 48 FR 14379, Apr. 4, 1983; 48 FR 37991, Aug. 22, 1983; 49 FR 5116, Feb. 10, 1984; 49 FR 8439, Mar. 7, 1984; 51 FR 19331, May 29, 1986; 55 FR 28028, July 9, 1990; 61 FR 6783, Feb. 22, 1996; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 65 FR 81742, Dec. 27, 2000; 72 FR 16974, Apr. 5, 2007; 74 FR 14670, Mar. 31, 2009]

### § 21.4253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements:

(1) The course has been accredited and approved by a nationally recognized accrediting agency or association. ''Candidate for accreditation'' status is not a basis for approval of a course as accredited.

(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.

(3) The course is conducted under the Act of February 23, 1917 (20 U.S.C. 11 *et seq.*).

(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree.

(5) The course is approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C.1395i–3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

(Authority: 38 U.S.C. 3675(a))

(b) *Course objective.* Any curriculum offered by an educational institution which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Any curriculum accredited by one of the specialized nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will also be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of a degree curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum. The course objective may be educational (high school diploma or a standard college degree) or it may be vocational or professional (an occupation).

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of Education as required by 38 U.S.C. 3675(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of

the course specifically accredited and approved by the agency or association.

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency:

(1) The institution (other than an elementary or secondary school) has submitted to the State approving agency copies of its catalog or bulletin which are certified as true and correct in content and policy by an authorized representative, and the publication shall:

(i) State with specificity the requirements of the institution with respect to graduation;

(ii) Include institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the institution, conditions of reentrance for those students dismissed for unsatisfactory progress, and a statement regarding progress records kept by the institution and furnished the student);

(iii) Include institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct; and

(iv) Include any attendance standards of the institution if the institution has and enforces such standards.

(Authority: 38 U.S.C. 3675(a), 3676(b))

(2) Adequate records are kept by the school to show the progress of each veteran or eligible person. The records must be sufficient to show continued pursuit at the rate for which enrolled and the progress being made. They must include final grade in each subject for each term, quarter, or semester; record of withdrawal from any subject to include the last date of attendance for a resident course; and record of reenrollment in subjects from which there was a withdrawal; and may include such records as attendance for resident courses, periodic grades and examination results.

(3) The school maintains a written record of previous education and training of the veteran or eligible person which clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately. The record must be cumulative in that the results of each enrollment period (term, quarter or semester) must be included so that it shows each subject undertaken and the final result, *i.e.*, passed, failed, incomplete or withdrawn.

(Authority: 38 U.S.C. 3675(b))

(4) The school enforces a policy relative to standards of conduct and progress required of the student. The school policy relative to standards of progress must be specific enough to determine the point in time when educational benefits should be discontinued, pursuant to 38 U.S.C. 3474 when the veteran or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, a 4-year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A.

(5) If the school has a standard of attendance, it maintains records of attendance for veterans and eligible persons enrolled in resident courses which are adequate to show the student meets the school's standard of attendance.

(Authority: 38 U.S.C. 3474, 3675)

(6) The accredited courses, the curriculum of which they form a part, and the instruction connected with those courses are consistent in quality, content, and length with similar courses in public educational institutions and other private educational institutions in the State with recognized accepted standards.

(7) There is in the educational institution offering the course adequate

space, equipment, instructional material, and instructor personnel to provide training of good quality.

(8) The educational and experience qualifications of directors, and administrators of the educational institution offering the courses, and instructors teaching the courses for which approval is sought, are adequate.

(Authority: 38 U.S.C. 3675(b), 3676(c)(1), (2), (3))

(e) *College level.* Under the provisions of paragraph (a)(1) of this section, any course at college level approved by the State approving agency as an accredited course will be accepted by the Department of Veterans Affairs as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized regional accrediting agency listed by the Secretary of Education or the course is accredited at the college level by a specialized accrediting agency or association recognized by the Secretary of Education; and

(Authority: 38 U.S.C. 3675)

(2) The course has entrance requirements of not less than the requirements applicable to the college level program of the school; and

(3) Credit for the course is awarded in terms of standard semester or quarter hours or by recognition at completion by the granting of a standard college degree.

(f) *Courses not leading to a standard college degree.* Any course in a school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The course or the school offering such course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field for which the accrediting agency is recognized and at a level for which it is recognized; and

(3) The course leads to a high school diploma or a vocational objective.

(Paperwork requirements in §21.4253(d)(1) were approved by the Office of Management and Budget under control number 2900–0568)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14938, June 7, 1973; 40 FR 33825, Aug. 12, 1975; 43 FR 35302, Aug. 9, 1978; 48 FR 37992, Aug. 22, 1983; 50 FR 43135, Oct. 24, 1985; 60 FR 32272, June 21, 1995; 61 FR 6783, Feb. 22, 1996; 62 FR 35424, July 1, 1997; 65 FR 81742, Dec. 27, 2000; 73 FR 1077, Jan. 7, 2008]

### § 21.4254 Nonaccredited courses.

(a) *General.* Nonaccredited courses are courses which are not approved as accredited courses and which are offered by a public or private, profit or nonprofit, educational institution. These include nonaccredited courses offered by extension centers or divisions, or vocational or adult education departments of institutions of higher learning.

(b) *Application.* Any school desiring to enroll veterans or eligible persons in nonaccredited courses will submit a written application to the appropriate State approving agency for approval of such courses (38 U.S.C. 3676(a)). Such application will be accompanied by not less than two copies of the current catalog or bulletin which is certified as true and correct in content and policy by an authorized owner or official of the school and will include the following:

(1) Identifying data, such as volume number, and date of publication;

(2) Names of the school and its governing body, officials, and faculty;

(3) A calendar of the school showing legal holidays, beginning and ending date of each quarter, term, or semester, and other important dates;

(4) School policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

(5) School policy and regulations relative to leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(6) School policy and regulations relative to standards of progress required of the student. This policy will define the grading system of the school, the

minimum grades considered satisfactory conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any, allowed by the school, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the school and furnished the student;

(7) School policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

(8) Detailed schedule of fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges;

(9) Policy and regulations relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course, or withdraws, or is discontinued therefrom;

(10) A description of the available space, facilities, and equipment;

(11) A course outline for each course for which approval is requested, showing subjects or units in the course, type of work, or skill to be learned, and approximate time and clock hours to be spent on each subject or unit; and

(12) Policy and regulations relative to granting credit for previous education and training.

(Authority: 38 U.S.C. 3676(b))

(c) *Approval criteria*. The appropriate State approving agency may approve the application of such school when the school and its nonaccredited courses are found upon investigation to have met the following criteria:

(1) The courses, curriculum, and instruction are consistent in quality, content, and length with similar recognized accepted standards.

(2) There is in the school adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(3) Educational and experience qualifications of directors, administrators, and instructors are adequate.

(4) The school maintains a written record of the previous education and training of the veteran or eligible person and clearly indicates that appropriate credit has been given for previous education and training, with the training period shortened proportionately, and the veteran or eligible person and the Department of Veterans Affairs so notified.

(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations pertaining to absences, grading policy, and rules of operation and conduct will be furnished the veteran or eligible person upon enrollment.

(6) Upon completion of training, the veteran or eligible person is given a certificate by the school indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building, and sanitation codes. The State approving agency may require such evidence of compliance as it deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The school will not be deemed to have met this requirement until the State approving agency:

(i) Has ascertained from the Federal Trade Commission whether the Commission has issued an order to the school to cease and desist from any act or practice, and

(ii) Has, if such an order has been issued, given due weight to that fact.

(11) The school does not exceed its enrollment limitations as established by the State approving agency.

(12) The school administrators, directors, owners, and instructors are of good reputation and character.

(13) The school either: (i) Has and maintains a policy for the pro rata refund of the unused portion of tuition, fees and charges if the veteran or eligible person fails to enter the course or

withdraws or is discontinued from it before completion, or

(ii) Has obtained a waiver of this requirement. See § 21.4255.

(Authority: 38 U.S.C. 3676)

(14) Such additional reasonable criteria as may be deemed necessary by the State approving agency.

(Authority: 38 U.S.C. 3676(c))

(d) *Limitations on course approval.* Notwithstanding any other provision of this section, a State approving agency shall not approve a nonaccredited course if it is to be pursued in whole or in part by independent study.

(Authority: 38 U.S.C. 3676(e))

[31 FR 6774, May 6, 1966, as amended at 33 FR 9546, June 29, 1968; 47 FR 42733, Sept. 29, 1982; 61 FR 6783, Feb. 22, 1996]

### § 21.4255 Refund policy; nonaccredited courses.

(a) *Acceptable refund policy.* A refund policy meets the requirements of § 21.4254(c)(13), if it provides that the amount charged for tuition, fees, and other charges for a portion of the course does not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to the total length. The school may make provision for refund within the following limitations:

(1) *Registration fee.* An established registration fee in an amount not to exceed $10 need not be subject to proration. Where the established registration fee is more than $10, the amount in excess of $10 will be subject to proration.

(2) *Breakage fee.* Where the school has a breakage fee, it may provide for the retention of only the exact amount of the breakage, with the remaining part, if any, to be refunded.

(3) *Consumable instructional supplies.* Where the school makes a separate charge for consumable instructional supplies, as distinguished from laboratory fees, the exact amount of the charges for supplies consumed may be retained but any remaining part must be refunded.

(4) *Books, supplies and equipment.* (i) A veteran or eligible person may retain or dispose of books, supplies and equipment at his or her discretion when:

(A) He or she purchased them from a bookstore or other source, and

(B) Their cost is separate and independent from the charge made by the school for tuition and fees.

(ii) The school will make a refund in full for the amount of the charge for unissued books, supplies and equipment when:

(A) The school furnishes the books, supplies and equipment.

(B) The school includes their cost in the total charge payable to the school for the course.

(C) The veteran or eligible person withdraws or is discontinued before completing the course.

(iii) The veteran or eligible person may dispose of issued items at his or her discretion even if they were included in the total charges payable to the school for the course.

(5) *Tuition and other charges.* Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran or eligible person than the approximate pro rata basis as provided in this paragraph, such established policy will be applicable. Otherwise, the school may charge a sum which does not vary more than 10 percent from the exact pro rata portion of such tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. The exact proration will be determined on the ratio of the number of days of instruction completed by the student to the total number of instructional days in the course.

(6) *Prompt refund.* In the event that the veteran, spouse, surviving spouse or child fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion of the course, the unused portion of the tuition, fees and other charges paid by the individual shall be refunded promptly. Any institution which fails to forward any refund due within 40 days after such a change in status, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this paragraph.

(b) *Waiver*. (1) An educational institution may apply through the appropriate State approving agency to the Director of the VA facility of jurisdiction for a waiver of the requirements of paragraph (a) of this section as they apply to a veteran or eligible person. The State approving agency shall forward the application to the Director along with its recommendations. The Director shall consider the recommendations and shall grant a waiver only when he or she finds that the educational institution:

(i) Is a college, university, or similar institution offering post-secondary level academic instruction leading to an associate or higher degree;

(ii) Is operated by an agency of a State or a unit of local government;

(iii) If operated by an agency of a State, is located within that State;

(iv) If operated by a unit of local government, is located within the boundaries of the area over which that unit has taxing jurisdiction;

(v) Is a candidate for accreditation by a regional accrediting agency; and

(vi) Charges the veteran or eligible person no more than $120 per quarter, $180 per semester or $360 per school year in tuition, fees and other charges for the course.

(2) If an educational institution disagrees with a decision of a Director of a VA facility, it may ask that the Director, Education Service review the decision. In reviewing the decision the Director must consider the evidence of record. He or she may not grant a waiver unless all the criteria of paragraph (b)(1) of this section are met.

(Authority: 38 U.S.C. 3676(d))

[47 FR 42733, Sept. 29, 1982]

### § 21.4256 Correspondence programs and courses.

(a) *Approval of correspondence programs and courses*. (1) An educational institution desiring to enroll veterans under 38 U.S.C. chapter 30 or 32, spouses and/or surviving spouses under 38 U.S.C. chapter 35, and/or reservists under 10 U.S.C. chapter 1606 in a program of education to be pursued exclusively by correspondence, or in the correspondence portion of a combination correspondence-residence course, may have the program or course approved only when the educational institution meets the requirements of §§ 21.4252(e), 21.4253, and 21.4279, as applicable.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0575)

(Authority: 38 U.S.C. 3672(e))

(2) The application of an educational institution for approval of a program of education to be pursued exclusively by correspondence or the correspondence portion of a combined correspondence-residence course must demonstrate that the program or course is satisfactory in all elements. The educational institution must certify to the State approving agency that at least 50 percent of those pursuing the program or course require six months or more to complete it. For applications for approval that are pending approval by the State approving agency on February 2, 1995, and for applications received by the State approving agency after that date, the required certification shall be based on the experience of students who completed the program or course during the six-month period immediately preceding the educational institution's application for approval.

(Authority: 38 U.S.C. 3672(e))

(3) State approving agencies have the authority to review periodically the length of time needed to complete each approved correspondence program or approved correspondence-residence course in order to determine whether the program or course should continue to be approved. In implementing this authority, a State approving agency will examine the results over a prior two-year period reasonably related to the date on which such a review is conducted.

(Authority: 38 U.S.C. 3672(e))

(b) *Enrollment agreement*. (1) An educational institution offering a program of education to be pursued exclusively by correspondence must enter into an

enrollment agreement with the veteran, spouse, surviving spouse, or reservist who wishes to receive educational assistance from VA while pursuing the program. The enrollment agreement shall disclose fully the obligations of the institution and the veteran, spouse, surviving spouse, or reservist, and shall display in a prominent place on the agreement the conditions for affirmance, termination, refund, and payment of the educational assistance by VA.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(a)(1), 3686(b))

(2) A copy of the agreement shall be given to the veteran, spouse, surviving spouse, or reservist when it is signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(3) The agreement shall not be effective unless the veteran, spouse, surviving spouse, or reservist after the expiration of 10 days after the agreement is signed, shall have signed and submitted to VA a written statement, with a signed copy to the institution, specifically affirming the agreement.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0576)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(c) *Mandatory refund policy*. (1) Upon notification of the educational institution by the veteran, spouse, surviving spouse, or reservist of an intention not to affirm the enrollment agreement, any fees paid by the individual shall be returned promptly in full to him or her.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(2) Upon termination of enrollment under an affirmed enrollment agreement for training in the accredited course by the veteran, spouse, surviving spouse, or reservist, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or $50, whichever is less, may be charged him or her. When the individual terminates the agreement after completion of less than 25 percent of the lessons of the course, the institution may retain the registration fee plus 25 percent of the tuition. When the individual terminates the agreement after completing 25 percent but less than 50 percent of the lessons, the institution may retain the registration fee plus 50 percent of the tuition for the course. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(3) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, spouse, surviving spouse, or reservist than the pro rata basis as provided in paragraph (b)(2) of this section, such established policy will be applicable.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(4) Any institution that fails to forward any refund due to the veteran, spouse, surviving spouse, or reservist within 40 days after receipt of a notice of termination or disaffirmance, shall be deemed, prima facie, to have failed to make a prompt refund as required by this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

[62 FR 63849, Dec. 3, 1997]

### § 21.4257 Cooperative courses.

A cooperative course may be approved when the course meets the requirement of § 21.4233(a).

### § 21.4258 Notice of approval.

(a) *General; letter of approval and other notice of approval requirements*. The State approving agency, upon determining that an educational institution, training establishment, or organization or entity offering a licensing or certification test has complied with all the requirements for approval will—

(1) Notify by letter, as described in paragraph (b) of this section, each such

educational institution, training establishment, or organization or entity offering a licensing or certification test; and

(2) Furnish VA an official copy of the letter, any attachments, and any subsequent amendments. In addition, the State approving agency will furnish VA a copy of each such—

(i) Educational institution's approved catalog or bulletin;

(ii) Training establishment's application requesting approval; or

(iii) Organization's or entity's candidate handbook.

(b) *Contents of letter of approval.* The letter of approval will include the following:

(1) For an educational institution: (i) Date of the letter and effective date of approval of courses;

(ii) Proper address and name of the educational institution;

(iii) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin;

(iv) Name of each course approved, except that a State approving agency, in lieu of listing the name of each course approved at an institution of higher learning, may identify approved courses by reference to page numbers in the school catalog or bulletin;

(v) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;

(vi) Signature of responsible official of State approving agency; and

(vii) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency.

(2) For a training establishment: (i) Date of the letter and effective date of approval of the apprentice or other on-the-job training;

(ii) Proper address and name of the training establishment;

(iii) Authority for approval and conditions of approval;

(iv) Name of the approved program of apprenticeship or other on-the-job training;

(v) Where applicable, enrollment limitations, such as maximum number of trainees authorized;

(vi) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency; and

(vii) Signature of responsible official of State approving agency.

(3) For an organization or entity offering a licensing or certification test:

(i) Date of the letter and effective date of approval of test(s);

(ii) Proper name of the organization or entity offering the licensing or certification test(s);

(iii) Name of each test approved indicating whether it is a licensing test or certification test;

(iv) Where applicable, enrollment limitations such as maximum numbers authorized and test taker-test proctor ratio; and

(v) Signature of responsible official of State approving agency.

(Authority: 38 U.S.C. 3672, 3678, 3689)

(c) *Compliance with equal opportunity laws.* (1) The State approving agency shall solicit assurance of compliance with:

(i) Title VI, Civil Rights Act of 1964,

(ii) Title IX, Education Amendments of 1972, as amended,

(iii) Section 504, Rehabilitation Act of 1973,

(iv) The Age Discrimination Act of 1975, and

(v) All Department of Veterans Affairs regulations adopted to carry out these laws.

(2) The State approving agency shall solicit this assurance from:

(i) Proprietary vocational, trade, technical, or other institutions and such schools not a part of a public elementary or secondary school.

(ii) All other educational institutions which the Department of Education has not determined to be in compliance with the equal opportunity laws listed in paragraph (c)(1) of this section.

(3) Whenever a State approving agency forwards to VA a Notice of Approval for a course offered by an institution described in paragraph (c)(2) of this

section, it shall also forward the institution's signed statement of compliance with these equal opportunity laws.

(20 U.S.C. 1681 *et seq.;* 29 U.S.C. 794; 38 U.S.C. 501, 3671; 42 U.S.C. 2000d, 6101 *et seq.;* 38 CFR parts 18, 18a, 18b)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13405, Sept. 23, 1967; 51 FR 26158, July 21, 1986; 72 FR 16974, Apr. 5, 2007]

### § 21.4259 Suspension or disapproval.

(a) The appropriate State approving agency, after approving any course or licensing or certification test:

(1) May suspend the approval of a course for new enrollments, or approval of a licensing or certification test, for a period not to exceed 60 days to allow the institution to correct any deficiencies, if the evidence of record establishes that the course or licensing or certification test fails to meet any of the requirements for approval.

(2) Will immediately disapprove the course or licensing or certification test, if any of the requirements for approval are not being met and the deficiency cannot be corrected within a period of 60 days.

(3) Upon suspension or disapproval, the State approving agency will notify the educational institution by certified or registered letter with a return receipt secured (38 U.S.C. 3679). It is incumbent upon the State approving agency to determine the conduct of courses and to take immediate appropriate action in each case in which it is found that the conduct of a course in any manner fails to comply with the requirements for approval.

(b) Each State approving agency will immediately notify VA of each course, or licensing or certification test, that it has suspended or disapproved.

(c) The Department of Veterans Affairs will suspend approval for or disapprove courses or licensing or certification tests under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See § 21.4150(c).

(d) The Department of Veterans Affairs will immediately notify the State approving agency in each case of Department of Veterans Affairs suspension or disapproval of any school under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 3679, 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051)

[41 FR 30640, July 26, 1976, as amended at 72 FR 16975, Apr. 5, 2007]

### § 21.4260 Courses in foreign countries.

(a) *Approval of postsecondary courses in foreign countries.* (1) In order to be approved a postsecondary course offered in a foreign country must meet all the provisions of this paragraph. A course offered by a foreign medical school (other than one located in Canada) must also meet all of the provisions of paragraph (b) of this section.

(i) The educational institution offering the course is an institution of higher learning, and

(ii) The course leads to a standard college degree or its equivalent.

(2) For the purpose of this paragraph, a degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution of higher learning in that country.

(b) *Approval of courses offered by a foreign medical school.* In addition to meeting all the criteria stated in paragraph (a) of this section, a course offered by a foreign medical school (other than one located in Canada) must also meet all of the following criteria:

(1) The school satisfies the criteria for listing as a medical school in the World Directory of Medical Schools published by the World Health Organization (WHO).

(2) The evaluating bodies (such as medical associations or educational agencies) whose views are considered relevant by the Director, Education Service, and which are located in the same country as the school—

(i) Recognize the school as a medical school, and

(ii) Approve the school.

(3) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom instruction at least 32 months long. This program must be—

(i) Supervised closely by members of the school's faculty, and

(ii) Provided either.

(A) Outside the United States in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or

(B) Inside the United States, through a training program for foreign medical students which has been approved by all the medical licensing boards and evaluating bodies whose views are considered relevant by the Director, Education Service.

(4) The school has graduated classes during each of the two 12-month periods immediately preceding the date on which VA receives the school's application for approval of its courses.

(5) The Director, Education Service, shall withdraw approval of any course when the course or the school offering it fails to meet any of the approval criteria in this section or in Chapter 36, Title 38 U.S.C.

(6) In making the decisions required by this paragraph, the Director, Education Service, may consult with the Secretary of Education. The Director may review any information about a foreign medical school which the Secretary may make available.

(c) *Approval of enrollments in foreign courses.* (1) Except as provided in paragraph (c)(2) of this section, the Department of Veterans Affairs will approve the enrollment of a veteran or eligible person in a course offered by an educational institution not located in a State when—

(i) The eligible person, serviceperson, veteran, or reservist meets the eligibility and entitlement requirements of either §§ 21.3040 through 21.3046, §§ 21.5040 and 21.5041, §§ 21.7040 through 21.7045, or § 21.7540, as appropriate;

(ii) The eligible person's, serviceperson's, veteran's, or reservist's program of education meets the requirements of either § 21.3021(h), § 21.5230, § 21.7020(b)(23), or § 21.7520(b)(17), as appropriate; and

(iii) The course meets the requirements of this section and all other applicable VA regulations.

(2) VA may deny or discontinue the payment of educational assistance allowance to a veteran, serviceperson, eligible person or reservist pursuing a course in an institution of higher learning not located in a State when VA finds that the veteran's, serviceperson's, eligible person's, or reservist's enrollment is not in his or her best interest or the best interest of the Federal Government.

(Authority: 38 U.S.C. 3687)

[52 FR 13239, Apr. 22, 1987, as amended at 61 FR 29296, June 10, 1996]

### § 21.4261 Apprentice courses.

(a) *General.* An apprentice course is any training on-the-job course which has been established as an apprentice course by a training establishment as defined in § 21.4200(c) and which has been approved as an apprentice course by the State approving agency.

(b) *Application.* Any training establishment desiring to furnish a course of apprentice training will submit a written application to the appropriate State approving agency setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(2) The length of the training period;

(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;

(4) The number of hours of supplemental related instruction required; and

(5) Any additional information required by the State approving agency.

(c) *Approval criteria.* The appropriate State approving agency may approve a course of apprentice training when the training establishment and its apprentice courses are found upon investigation to have met the following criteria:

(1) The standards of apprenticeship published by the Secretary of Labor pursuant to 29 U.S.C. 50a;

(2) A signed copy of the training agreement for each veteran or eligible

person, making reference to the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Department of Veterans Affairs and the State approving agency by the employer; and

(3) The course meets such other reasonable criteria as may be established by the State approving agency.

(Authority: 38 U.S.C. 3687)

(d) *Promotion*. As funding permits, Department of Veterans Affairs employees will promote the development of apprenticeships. They will:

(1) Visit employers and joint apprenticeship committees,

(2) Coordinate their efforts with activities of any State approving agencies that may choose to promote the development of apprenticeships, and

(3) Avoid duplicating the efforts of others by coordinating their promotional efforts with similar activities of the Department of Labor and State employment security agencies as provided by written agreements covering these activities, including utilization of disabled veterans' outreach program specialists.

(Authority: 38 U.S.C. 3672(d))

[32 FR 13405, Sept. 23, 1967, as amended at 33 FR 9546, June 29, 1968; 38 FR 14938, June 7, 1973; 47 FR 42731, Sept. 29, 1982]

### § 21.4262 Other training on-the-job courses.

(a) *General*. An ''other training on-the-job'' course is any training on the job which does not qualify as an apprentice course, as defined in § 21.4261, but which otherwise meets the requirements of paragraph (c) of this section.

(b) *Application*. Any training establishment desiring to furnish a course of other training on-the-job will submit to the appropriate State approving agency a written application setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(2) The length of the training period;

(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;

(4) The number of hours of supplemental related instruction required;

(5) The entrance wage or salary paid by the training establishment to employees already trained in the kind of work for which the veteran or eligible person is to be trained;

(6) A certification that the wages to be paid the veteran or eligible person upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 percent of the wages paid for the job for which he or she is to be trained, and will be increased in regular periodic increments until, not later than the last full month of the scheduled training period they will be at least 85 percent of the wages paid for the job for which the veteran or eligible person is being trained;

(7) A certification that there is reasonable certainty that the job for which the veteran or eligible person is to be trained will be available to him or her at the end of the training period; and

(8) Any additional information required by the State approving agency.

(c) *Approval criteria*. The appropriate State approving agency may approve the application submitted under paragraph (b) of this section, when the training establishment and its courses are found upon investigation to have met the criteria outlined in this paragraph. Approval will not be granted for training in occupations which require a relatively short period of experience for a trainee to obtain and hold employment at the market wage in the occupation. This includes occupations such as automobile service station attendant or manager, soda fountain attendant, food service worker, salesman, window washer, building custodian or other unskilled or common labor positions as well as clerical positions for which on-the-job training is not the normal method of procuring qualified personnel.

(1) The job which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills

learned through organized and supervised training on-the-job and not on such factors as length of service and normal turnover;

(2) The training content of the course is adequate to qualify the veteran or eligible person for appointment to the job for which he or she is to be trained;

(3) The job customarily requires a period of training of not less than 6 months and not more than 2 years of full-time training;

(4) The length of the training period is not longer than that customarily required by the training establishments in the community to provide the veteran or eligible person with the required skills, arrange for the acquiring of job knowledge, technical information, and other facts which the veteran or eligible person will need to learn in order to become competent on the job for which he or she is being trained;

(5) Provision is made for related instruction for the individual veteran or eligible person who may need it;

(6) There is in the training establishment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on-the-job;

(7) Adequate records are kept to show the progress made by each veteran or eligible person toward his or her job objective;

(8) The veteran or eligible person is not already qualified by training and experience for the job;

(9) The requirements of paragraphs (b)(6) and (7) of this section are met;

(10) A signed copy of the training agreement for each veteran or eligible person, including the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Department of Veterans Affairs and the State approving agency by the employer; and

(11) The course meets such other reasonable criteria as may be established by the State approving agency.

(Authority: 38 U.S.C. 3677)

(d) *Promotion*. As funding permits, Department of Veterans Affairs employees will promote the development of on-the-job training courses. They will:

(1) Visit employers,

(2) Coordinate their efforts with activities of any State approving agencies that may choose to promote the development of on-the-job training courses, and

(3) Avoid duplicating the efforts of others by coordinating their promotional efforts with similar activities of the Department of Labor and State employment security agencies as provided by written agreements covering these activities, including utilization of disabled veterans' outreach program specialists.

(Authority: 38 U.S.C. 3672(d))

[32 FR 13405, Sept. 23, 1967, as amended at 33 FR 9546, June 29, 1968; 35 FR 9817, June 16, 1970; 38 FR 14939, June 7, 1973; 45 FR 51778, Aug. 5, 1980; 47 FR 42731, Sept. 29, 1982; 60 FR 32272, June 21, 1995]

### § 21.4263 Approval of flight training courses.

(a) *A flight school or institution of higher learning are the only entities that can offer flight courses*. A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it. The provisions of § 21.4150 shall determine the proper State approving agency for approving a flight course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b), 3671, 3672, 3676)

(b) *Definition of flight school*. A *flight school* is a school, other than an institution of higher learning, or is an entity, such as an aero club; is located in a State; and meets one of the following sets of requirements:

(1) The Federal Aviation Administration has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141;

(2) The entity is either a flight training center or an air carrier that does not have a pilot school certificate or provisional pilot school certificate issued by the Federal Aviation Administration under 14 CFR part 141, but pursuant to a grant of exemption letter

issued by the Federal Aviation Administration under 14 CFR part 61 is permitted to offer pilot training by a flight simulator instead of an actual aircraft; or

(3) The Federal Aviation Administration has issued the school or entity a training center certificate under 14 CFR part 142.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452(c))

(c) *Aero club courses.* An aero club, established, formed, and operated under authority of service department regulations as a nonappropriated sundry fund activity, is an instrumentality of the Federal government. Consequently, VA has exclusive jurisdiction over approval of flight courses offered by such aero clubs.

(Authority: 38 U.S.C. 3671, 3672)

(d) *Approval of flight training as part of a degree program.* A State approving agency may approve a flight training course that is part of a program of education leading to a standard college degree provided the course and program meet the requirements of §21.4253 or §21.4254, as appropriate. The institution of higher learning offering the course need not be a flight school.

(Authority: 38 U.S.C. 3675, 3676)

(e) *Approval of flight training courses that are not part of a degree program.* A flight course is subject to the same approval requirements as any other course. In addition, the State approving agency must apply the following provisions to the approval of flight courses:

(1) The Federal Aviation Administration must approve the course; and

(2)(i) The course must meet the requirements of 14 CFR part 63 or 141, and a flight school described in paragraph (b)(1) or (b)(3) of this section must offer it; or

(ii) The course must meet the requirements of 14 CFR part 61, and either be offered—

(A) By a flight school described in paragraph (b)(3) of this section; or

(B) In whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the Federal Aviation Administration to the flight school offering the course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b), 3676, 3680A)

(f) *Application of 38 U.S.C. 3680A(e)(2) to flight training.* Notwithstanding the fact that the Federal Aviation Administration will permit flight schools to conduct training at a base other than the main base of operations if the requirements of either 14 CFR 141.91 or 14 CFR 142.17 are met, the satellite base is considered under 38 U.S.C. 3680A(e)(2) to be a branch of the principal school, and must meet the requirements of 38 U.S.C. 3680A(e)(2).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3680A))

(g) *Providing a flight course under contract between schools or entities.* When a school or entity offers all or part of a flight course under a contract with another school or entity, the State approving agency must apply §21.4233 in the following manner:

(1) The requirements of §21.4233(e) must be met for all contracted flight instruction, instruction by flight training device, flight simulator instruction, and ground school training. Ground school training may be given through a ground school facility operated jointly by two or more flight schools in the same locality; and

(2) The responsibility for providing the instruction lies with the flight school. The degree of affiliation between the flight school and the entity or other school that actually does the instructing must be such that all charges for instruction are made by, and paid to, one entity having jurisdiction and control over both the flight and ground portions of the program.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b))

(h) *Nonaccredited courses*—(1) *Application of §21.4254 to flight training.* The provisions of §21.4254 are applicable to approval of flight training courses.

(2) *Additional instruction requirements.* The State approving agency will apply the following additional requirements to a flight course:

(i) All flight instruction, instruction by flight training device, flight simulator instruction, preflight briefings and postflight critiques, and ground school training in a course must be given by the flight school or under suitable arrangements between the school and another school or entity such as a local community college.

(ii) All ground school training connected with the course must be in residence under the direction and supervision of a qualified instructor providing an opportunity for interaction between the students and the instructor. Simply making provision for having an instructor available to answer questions does not satisfy this requirement.

(3) A flight school must keep at a minimum the following records for each eligible veteran, servicemember, or reservist pursuing flight training:

(i) A copy of his or her private pilot certificate;

(ii) Evidence of completion of any prior training that may be a prerequisite for the course;

(iii) A copy of the medical certificate required by paragraph (a)(2) of this section for the courses being pursued and copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction received at the current school;

(iv) A daily flight log or copy thereof;

(v) A permanent ground school record;

(vi) A progress log;

(vii) An invoice of flight changes for individual flights or flight lessons for training conducted on a flight simulator or advanced flight training device;

(viii) Daily flight sheets identifying records upon which the 85–15 percent ratio may be computed;

(ix) A continuous meter record for each aircraft;

(x) An invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft, and aircraft identification number;

(xi) An accounts receivable ledger;

(xii) Individual instructor records;

(xiii) Engine log books;

(xiv) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under 14 CFR part 61, part 63, part 141, or part 142;

(xv) Records of tuition and accounts which are evidence of tuition charged and received from all students; and

(xvi) If training is provided under 14 CFR part 141, the records required by that part, or if training is provided under 14 CFR part 142, the records required by that part.

(Authority: 38 U.S.C. 3671, 3672, 3676, 3690(c))

(i) *Hourly limitations.* A flight course approved pursuant to paragraph (e) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an identified vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraph (i)(1) through (3) of this section. Flight instruction may never be substituted for ground training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(1) *Flight or flight simulator instruction.* Except as provided in paragraph (i)(4) of this section, the maximum number of hours of flight instruction or flight simulator instruction which may be approved for a flight course shall not exceed the number determined by this paragraph.

(i) The maximum number of hours of solo flight instruction shall not exceed the minimum number of hours required for the course provided by FAA regulations.

(ii) The maximum number of hours of dual flight instruction shall not exceed the lesser of—

(A) The number of hours of dual flight instruction in the course outline approved by the FAA, or

(B) 120% of the minimum number of hours of dual flight instruction required for the course by FAA regulations.

(iii) The maximum number of hours of instruction by flight simulator or flight training device that a State approving agency may approve is the

maximum number of hours of instruction by flight simulator or flight training device permitted by 14 CFR part 61 for that course when:

(A) A course is offered in whole or in part by flight simulator or flight training device conducted by a training center certificated under 14 CFR part 142; and

(B) 14 CFR part 61 contains a maximum number of hours of instruction by flight simulator or flight training device that may be credited toward the requirements of the rating or certificate that is the objective of the course.

(iv) If a course is offered in whole or in part by flight simulator or flight training device, and the course is not described in paragraph (i)(1)(iii) of this section, either because the course is offered by a flight training center with a grant of exemption letter, or because 14 CFR part 61 does not contain a maximum number of hours of instruction by flight simulator or flight training device, the maximum number of hours of instruction by flight simulator or flight training device that may be approved may not exceed the number of hours in the Federal Aviation Administration-approved outline.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3032(f), 3231(f))

(2) *Ground school.* The ground training portion of a flight course may include two forms of ground training instruction, ground school and preflight briefings and postflight critiques. The minimum hours for ground training, as specified in 14 CFR part 141, appendixes C through J refer only to ground school and not to preflight briefings and postflight critiques. If the ground school training consists of units using kits containing audiovisual equipment, quizzes and examinations, the maximum number of units approved shall not exceed the number on the course outline approved by the FAA. For all other ground school training, the number of hours of training shall not exceed the number of hours on the course outline approved by the FAA.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(3) *Preflight briefings and postflight critiques.* Hours spent in preflight briefings and postflight critiques need not be approved by the FAA.

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques shall not exceed the number of hours on the outline exclusive of the preflight briefings and post-flight critiques which are attributable to solo flying hours that exceed the minimum number of solo flying hours for the course in 14 CFR part 141.

(ii) If these hours are not on the FAA-approved outline, they may not be approved unless the State approving agency finds that the briefings and critiques are an integral part of the course and do not precede or follow solo flying hours which exceed the minimum number of solo flying hours for the course in 14 CFR part 141. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 10 U.S.C. 16131(f)(4); 16136(c), 38 U.S.C. 3002(3), 3032(f)(4), 3202(2), 3231(f)(4), 3452(b))

(4) *Waiver of limitation in approvable course hours.* (i) Flight schools that wish to have a greater number of hours of dual flight instruction approved than are permitted by paragraph (i)(1)(ii) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should—

(A) State the reasons why the flight school believes that the approval should extend to a greater number of hours, and

(B) Include any evidence tending to show that the greater number of hours should be approved.

(ii) The Director, Education Service shall base her or his decision upon the evidence submitted, the recommendation of the Director of the VA facility, and, if appropriate, the recommendation of the State approving agency having jurisdiction over the flight school.

(iii) The limit on the number of hours of solo flight instruction found in paragraph (i)(1)(i) of this section may not be waived.

(Authority: 10 U.S.C. 16131(f)(4); 38 U.S.C. 3032(f)(4), 3231(f)(4))

(j) *Charges*. The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours which exceed the maximum permitted under paragraph (i)(1)(i) of this section and for preflight briefings and postflight critiques which precede or follow the excess solo hours.

(Authority: 38 U.S.C. 3672)

(1) The approved charges for tuition and fees shall be based upon the charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. Charges for books, supplies and lodging may not be reimbursed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(2) For the ground school portion of ground training, the State approving agency should approve group charges or unit prices if audio-visual equipment is used. For the preflight briefings and postflight critiques, the State approving agency should approve individual instructor rates for individual training flights. An average charge per hour based upon total hours and cost of all training given on the ground may not be approved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(3) A veteran, servicemember or reservist or group (all or part of whom are veterans, servicemembers or reservists) owning an airplane may lease it to an approved flight school and have exclusive use of the aircraft for flight training. The aircraft should meet the requirements prescribed for all airplanes to be used in the course, and should be shown in the approval by the State approving agency. The leasing arrangement should not result in charges for flight instruction for those owning the airplane greater than charges made to others not leasing an aircraft to the school.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(4) If membership in a flight club entitles a veteran, servicemember or reservist to flight training at less than the standard rate, his or her educational allowance will be based on the reduced rate. No payments will be made for the cost of joining the flight club, since it is not a charge for the flight course.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(k) *Substitute aircraft*. Except for minor substitutions a veteran, servicemember or reservist enrolled in a flight course may train only in the aircraft approved for that course. If a particular aircraft is not available for some compelling reason, the veteran, servicemember or reservist may be permitted to train in an aircraft different from that approved for the particular course, provided the aircraft substituted will adequately meet the training requirements for this particular phase of the course. Substitutions should be explained on the monthly certifications of flight training. If this shows that the charge for the substituted aircraft is different from the charge approved for the regular aircraft, the reimbursement will be based on the lesser charge. When substitution becomes the practice rather than the exception, VA will suspend payments and notify the veterans, servicemembers, reservists and the school. VA will refer the matter to the State approving agency for appropriate action.

(Authority: 10 U.S.C. 16136(b), 16136(c); 38 U.S.C. 3034(d), 3672(a))

(l) *Enrollment limitations*. A flight course must meet the 85–15 percent ratio requirement set forth in § 21.4201 before VA may approve new enrollments in the course. The contracted portion of a flight course must meet all

the requirements of §21.4201 for each subcontractor.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3680A(d))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0613)

[45 FR 51778, Aug. 5, 1980, as amended at 48 FR 37992, Aug. 22, 1983; 57 FR 29801, July 7, 1992; 59 FR 21938, Apr. 28, 1994; 61 FR 20728, May 8, 1996; 63 FR 34130, June 23, 1998; 67 FR 12474, Mar. 19, 2002]

**§21.4264 Farm cooperative courses.**

(a) *Description of a farm cooperative course.* A farm cooperative course is an institutional agricultural course. It provides training on a reduced basis to those engaged in farming, compared to other types of training. Part-time benefits are provided for students whose farming operation will not permit them to attend class at least 10 hours per week.

(b) *Farm cooperative students must be farmers.* In order to receive educational assistance allowance an eligible person must be engaged concurrently in agricultural employment for an average of at least 40 hours per week. This agricultural employment must be relevant to the farm cooperative course.

(c) *Acceptable class schedules.* (1) The institutional portion of a farm cooperative course:

(i) May be on a term, quarter or semester basis, or

(ii) May consist of courses which:

(A) Are offered during at least 44 weeks of the year, and

(B) Require a minimum of 5 clock hours per week.

(2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See §21.4270(c) of this part for measurement of farm cooperative courses.

(Authority: 38 U.S.C. 3482, 3532)

(d) *Application.* (1) Any school desiring to enroll spouses or children in farm cooperative courses:

(i) Will submit to the appropriate State approving agency a written application for approval in accordance with §21.4253 or §21.4254 as appropriate; and

(ii) Must submit statements of fact showing at least the following:

(A) That the course is set up in the school catalog or other literature of the school;

(B) That the agricultural course is offered concurrently with agricultural employment; and

(C) That the school itself verifies on a continuing basis that students are engaged for an average of at least 40 hours per week in suitable agricultural employment which is relevant to the institutional agricultural course offered by the school and is in an area consistent with their institutional training program.

(2) For the purposes of this paragraph suitable agricultural employment must include employment on a farm or other agricultural establishment where the basic activity is either:

(i) The cultivation of the ground such as the raising and harvesting of crops including fruits, vegetables and pastures, or

(ii) The feeding, breeding and managing of livestock, including poultry and other specialized farming.

(3) The Department of Veterans Affairs does not consider employment in training establishments which are engaged primarily in the processing, distribution or sale of agricultural products or combinations thereof, such as dairy processing plants, grain elevators, packing plants, hatcheries, stockyards or florists shops to be suitable agricultural employment.

(e) *Approval criteria.* The appropriate State approving agency may approve the school's application when the agency finds upon investigation that the school and its courses have met the following conditions:

(1) The criteria specified in §21.4253 or §21.4254, as appropriate; and

(2) The requirements of paragraph (d) of this section.

(Authority: 38 U.S.C. 3482, 3532)

[46 FR 16101, Mar. 11, 1981, as amended at 54 FR 33890, Aug. 17, 1989; 61 FR 26115, May 24, 1996]

**§ 21.4265 Practical training approved as institutional training or on-job training.**

(a) *Medical-dental internships and residencies.* (1) Medical residencies (other than residencies in podiatric medicine), dental residencies, and osteopathic internships and residencies may be approved and recognized as institutional courses only when an appropriate accrediting agency accredits and approves them as leading to certification for a recognized professional objective.

(2) The appropriate accrediting agencies are:

(i) The Accreditation Council for Graduate Medical Education, or where the Accreditation Council for Graduate Medical Education has delegated accrediting authority, the appropriate Residency Review Committee,

(ii) The American Osteopathic Association, and

(iii) The Commission on Dental Accreditation of the American Dental Association.

(3) These residency programs—

(i) Must lead to certification by an appropriate Specialty or Subspecialty Board, the American Osteopathic Association, or the American Dental Association; and

(ii) Will not be approved to include a period of practice following completion of the education requirements even though the accrediting agency requires the practice.

(4) Except as provided in paragraph (a)(5) of this section, no other medical or dental residency or osteopathic internship or residency will be approved or recognized as institutional training.

(5) A residency in podiatric medicine may be approved and recognized as institutional training only when it has been approved by the Council on Podiatry Education of the American Podiatry Association.

(Authority: 38 U.S.C. 3688(b))

(b) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be assessed as institutional training when they are provided in autonomous schools of nursing, hospital schools of nursing, or schools of nursing established in other schools or departments of colleges and universities, if they are accredited by a nationally recognized accrediting agency or if they meet the requirements of the licensing body of the State in which the school is located. The hospital or fieldwork phase of a nursing course, including a course leading to a degree in nursing, will be assessed as an institutional course when the hospital or fieldwork phase is an integral part of the course, the completion thereof is a prerequisite to the successful completion of the course, the student remains enrolled in the school during the period, and the training is under the direction and supervision of the school.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be assessed as institutional training including both the academic subjects and the clinical training if the clinical training is offered by an affiliated or cooperating hospital and the student is enrolled in and supervised by the school during the period of such clinical training. Also they must be accredited by a nationally recognized accrediting agency or meet the requirements of the licensing body of the State in which the school is located.

(3) Except for enrollment in a nurse's aide course approved pursuant to § 21.4253(a)(5), VA shall not approve an enrollment in a nonaccredited nursing course which does not meet the licensing requirements of the State where the course is offered.

(Authority: 38 U.S.C. 3452, 3688)

(c) *Medical and dental specialty courses.* (1) Required clinical training included in a school course given in an affiliated hospital, clinic, laboratory, or medical center as a part of a medical or dental specialty course whether accredited or nonaccredited offered by a school such as X-ray technician, medical technician, medical records administrator, physical therapist or dental technician shall be assessed as institutional training provided:

(i) The student remains enrolled in the course during the clinical period;

(ii) The clinical training is;

(*a*) An integral part of the course;

(*b*) A prerequisite to the successful completion of the course; and

(*c*) Under the direction and supervision of the school; and

(iii) The course includes substantial technical or professional training and does not consist of training preliminarily directed to clerical, administrative, secretarial, or receptionist duties.

(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories, or medical centers which are accredited as institutional courses by a nationally recognized accrediting agency will be assessed as institutional training.

(3) Clinical training included in a school course given in a physician's office or a dentist's office, also called externship, will be recognized as part of the institutional training if the course is accredited by a nationally recognized accrediting agency and meets the other requirements of paragraph (c)(1) of this section. If the course is not so accredited such practical or on-the-job training or experience in a physician's office may not be included unless the program is approved as a cooperative course.

(4) Nonaccredited courses offered in hospitals, clinics, laboratories, or medical centers will be considered on-the-job training when the courses meet the requirements of §21.4262.

(d) *Medical and dental assistants courses for the Department of Veterans Affairs.* A course prescribed by the Secretary for full-time physicians' assistants or for full-time expanded-function auxiliaries (formerly referred to as dentists' assistants) may be approved as institutional training, if the course is conducted at Department of Veterans Affairs facilities or in facilities operated by hospitals, medical schools, or medical installations pursuant to a contract with the Department of Veterans Affairs.

(Authority: 38 U.S.C. 7407)

(e) *Professional training courses.* (1) Any non-medically related professional internship program, such as a clinical pastoral course, will be recognized as an institutional course when it is accredited as an institutional course by a nationally recognized accrediting agency, and

(2) The approved facility for such a course must be the institution or other facility where the training is given.

(f) *Other practical training courses.* (1) Other off-campus job experience included in a school course, variously described by schools as internship, residency, practicum, externship, et cetera, may be included as a part of a cooperative program when the course meets the requirements of §21.4233(a).

(2) However, such off-campus courses may be considered as resident institutional training only if all of the following conditions are met. The course is:

(i) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting associations;

(ii) A part of the approved curriculum of the school;

(iii) Directly supervised by the school;

(iv) Measured in the same unit as other courses;

(v) Required for graduation; and

(vi) Has a planned program of activities described in the school's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least:

(A) A unit subject description;

(B) A provision for an assigned instructor;

(C) A statement that the planned program of activities is controlled by the school, not by the officials of the job establishment;

(D) A requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student;

(E) A statement that appropriate assignments are required for completion of the course;

(F) A grading system similar to the system used for other resident subjects offered by the school; and

(G) A schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the school for its other resident courses.

(g) *Nonaccredited courses.* Any nonaccredited internship program not

given in a school will be recognized as other on-the-job training when it meets the requirements of § 21.4262 and when the program is required for licensure by the State in which it is offered. (See § 21.4275 for measurement.)

[41 FR 26683, June 29, 1976, as amended at 43 FR 25429, June 13, 1978; 49 FR 39545, Oct. 9, 1984; 54 FR 34984, Aug. 23, 1989; 61 FR 6783, Feb. 22, 1996]

### § 21.4266 Approval of courses at a branch campus or extension.

(a) *Definitions.* The following definitions apply to the terms used in this section.

(1) *Administrative capability* means the ability to maintain all records and accounts that § 21.4209 requires.

(2) *Certifying official* means a representative of an educational institution designated to provide VA with the reports and certifications that §§ 21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require.

(3) *Main campus* means the location where the primary teaching facilities of an educational institution are located. If an educational institution has only one teaching location, that location is its main campus. If it is unclear which of the educational institution's teaching facilities is primary, the main campus is the location of the primary office of its Chief Executive Officer.

(4) *Branch campus* means a location of an educational institution that—

(i) Is geographically apart from and operationally independent of the main campus of the educational institution;

(ii) Has its own faculty, administration and supervisory organization; and

(iii) Offers courses in education programs leading to a degree, certificate, or other recognized education credential.

(5) *Extension* means a location of an educational institution that is geographically apart from and is operationally dependent on the main campus or a branch campus of the educational institution.

(Authority: 38 U.S.C. 3675, 3676, 3684)

(b) *State approving agency jurisdiction.* (1) The State approving agency for the State where a residence course is being taught has jurisdiction over approval of that course for VA education benefit purposes.

(2) The fact that the location where the educational institution is offering the course may be temporary will not serve to change jurisdictional authority.

(3) The fact that the main campus of the educational institution may be located in another State from that in which the course is being taught will not serve to change jurisdictional authority.

(Authority: 38 U.S.C. 3672)

(c) *Approving a course offered by a branch campus or an extension of an educational institution.* Before approving a course or a program of education offered at a branch campus or an extension of an educational institution, the State approving agency must ensure that—

(1) Except as provided in paragraph (d) of this section, each location where the course or program is offered has administrative capability; and

(2) Except as provided in paragraph (f) of this section, each location where the course or program is offered has a certifying official on site.

(Authority: 38 U.S.C. 3672)

(d) *Exceptions to the requirement that administrative capability exist at each location.* (1) A State approving agency may approve a course or program offered by a branch campus that does not have its own administrative capability if—

(i) The main campus of the educational institution within the same State maintains a centralized recordkeeping system that includes all records and accounts that § 21.4209 requires for each student attending the branch campus without administrative capability. These records may be originals, certified copies, or in an electronically formatted record keeping system; and

(ii) The main campus can identify the records of students at the branch campus for which it maintains centralized records.

(2) The State approving agency may approve a course or program offered by an extension that does not have its own administrative capability if—

(i) The extension and the main campus or branch campus it is dependent on are located within the same State;

(ii) The main campus or branch campus the extension is dependent on has administrative capability for the extension; and

(iii) The State approving agency combines the approval of the course(s) offered by the extension with the approval of the courses offered by the main campus or branch campus the extension is dependent on.

(e) *Combined approval.* The State approving agency may combine the approval of courses offered by an extension of an educational institution with the approval of the main campus or the branch campus that the extension is dependent on, if the extension is within the same State as the campus it is dependent on. Combining the approval of courses offered by an extension, with the approval of courses offered by the main campus or branch campus the extension is dependent on, does not negate the minimum period of operation requirements in §21.4251 for courses that do not lead to a standard college degree offered by an extension of a proprietary educational institution. The State approving agency will list the extension and courses approved on the notice of approval sent to the educational institution pursuant to §21.4258 of this part.

(f) *Exceptions to the requirement that each location where the course or program is offered must have a certifying official on site.* Exceptions to the requirement in paragraph (c) of this section, that each location with an approved course or program of education must have a certifying official on site, will be permitted for—

(1) Extensions of an educational institution when the State approving agency combines the approval of the courses offered by the extension with a branch campus or main campus. (See paragraph (e) of this section.)

(2) Educational institutions with more than one campus within the same State if the main campus—

(i) Maintains a centralized recordkeeping system. (See paragraph (d)(1) of this section.);

(ii) Has administrative capability for the branch campus (or branch campuses) within the same State; and

(iii) Centralizes its certifying official function at the main campus.

(3) Educational institutions with multi-state campuses when an educational institution wants to centralize its certifying official function into one or more locations if:

(i) The educational institution submits all required reports and certifications that §§21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require via electronic submission through VA's Internet-based education certification application;

(ii) The educational institution designates an employee, at each teaching location of the educational institution that does not have a certifying official present, to serve as a point-of-contact for veterans, servicemembers, reservists, or other eligible persons; the certifying official(s); the State approving agency of jurisdiction; and VA. The designated employee must have access (other than to transmit certifications) to VA's Internet-based education certification application to provide certification information to veterans, servicemembers, reservists, or other eligible persons, State approving agency representatives, and VA representatives;

(iii) Each certifying official uses the VA facility code for the location that has administrative capability for the teaching location where the student is training when submitting required reports and certifications to VA; and

(iv) Each certifying official has full access to the administrative records and accounts that §21.4209 requires for each student attending the teaching location(s) for which the certifying official has been designated responsibility. These records may be originals, certified copies, or in an electronically formatted record keeping system.

(Authority: 38 U.S.C. 3672)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0073)

[72 FR 20427, Apr. 25, 2007]

**§ 21.4267 Approval of independent study.**

(a) *Overview.* Except as provided in §§ 21.4252(g), 21.7120(d), and 21.7622(f), VA may not pay educational assistance for a nonaccredited course which is offered in whole or in part by independent study. Hence, it is necessary to differentiate independent study from similar courses.

(Authority: 38 U.S.C. 3014, 3523, 3672, 3676(e), 3680A(a))

(b) *Definition of independent study.* (1) VA considers a course to be offered entirely by independent study when—

(i) It consists of a prescribed program of study with provision for interaction between the student and the regularly employed faculty of the institution of higher learning. The interaction may be personally or through use of communications technology, including mail, telephone, videoconferencing, computer technology (to include electronic mail), and other electronic means;

(ii) It is offered without any regularly scheduled, conventional classroom or laboratory sessions; and

(iii) It is not a course listed in paragraph (c), (d), or (e) of this section.

(2) VA considers a course to be offered in part by independent study when—

(i) It is not classified as one of the three types of courses listed in paragraph (c) of this section;

(ii) It has some weeks when standard class sessions are scheduled; and

(iii) It consists of independent study as defined in paragraph (b)(1) of this section during those weeks when there are no regularly scheduled class sessions.

(Authority: 38 U.S.C. 3523, 3676(e), 3680A(a))

(c) *Scope of independent study.* VA does not consider any of the following courses to be courses offered by independent study.

(1) A cooperative course as defined in § 21.4233(a);

(2) A farm cooperative course; or

(3) A course approved as a correspondence course.

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

(d) *Undergraduate resident training.* VA considers the following undergraduate courses to be resident training.

(1) A course which meets the requirements for resident institutional training found in § 21.4265(f);

(2) A course which requires regularly scheduled, standard class sessions at least once every two weeks and which has a total number of class sessions equal to the number of credit hours awarded for the course, times the number of weeks in a standard quarter or semester, as applicable;

(3) A course of student teaching; and

(4) Flight training which is an integral part of a standard undergraduate college degree.

(e) *Graduate resident training.* VA considers a graduate course to be resident training if the course—

(1) Is offered through regularly scheduled, conventional classroom or laboratory sessions; or

(2) Consists of research (either on campus or in absentia) necessary for the preparation of the student's—

(i) Master's thesis,

(ii) Doctoral dissertation, or

(iii) Similar treatise which is prerequisite to the degree being pursued; or

(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 organization 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 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;

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

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

(Authority: 38 U.S.C. 3688(a))

(b) *Measurement of non-college degree courses offered by institutions of higher learning.* (1) Notwithstanding the provisions of paragraph (a)(1) of this section, if a student is enrolled in a course which is not leading to a standard college degree and which is offered by an institution of higher learning, VA will measure his or her enrollment in the same manner as collegiate undergraduate courses are measured according to the provisions of paragraph (c) of this section.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a student is enrolled in a course not leading to a standard college degree which

is offered on a standard quarter- or semester-hour basis by an educational institution which is not an institution of higher learning, VA shall measure his or her enrollment in the same manner as collegiate undergraduate courses are measured according to the provisions of paragraph (c) of this section, provided that the educational institution requires at least the same minimum number of hours of weekly attendance as are required by paragraph (a)(1) of this section for courses offered on a clock-hour basis. If the educational institution does not require at least the same minimum number of hours of weekly attendance as are required in paragraph (a)(1) of this section, VA will not apply the provisions of paragraph (c) of this section, but will measure the course according to the criteria in paragraph (a)(1) of this section.

(Authority: 38 U.S.C. 3688(a)(7))

(c) *Undergraduate, graduate, professional, and on-the-job training courses.* Collegiate graduate, professional and on-the-job training courses shall be measured as stated in this table. This shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and sessions mentioned in this table mean clock hours and class sessions per week.

(Authority: 38 U.S.C. 3482, 3532, 3677, 3687, 3688)

COURSES

| Kind of school | Kind of course | Full time | ¾ time | ½ time | Less than ½ more than ¼ time | ¼ time or less |
|---|---|---|---|---|---|---|
| Collegiate undergraduate. | Standard collegiate courses including cooperative and external degree programs [1]. | 14 semester hours or equivalent [2]. | 10 through 13 semester hours or equivalent. | 7 through 9 semester hours or equivalent. | 4 through 6 semester hours or equivalent. | 1 through 3 semester hours or equivalent. |
| Collegiate graduate. | Standard collegiate graduate courses including law and external degree programs [1]. | 14 semester hours or equivalent or as certified by a responsible official of the school [2]. | 10 through 13 semester hours or as certified by a responsible official of the school. | 7 through 9 semester hours as certified by a responsible official of the school. | 4 through 6 semester hours or as certified by a responsible official of the school. | 1 through 3 semester hours or as certified by a responsible official of the school. |
| Professional nonaccredited. | Law only [3] ..... | 12 class sessions per week. | 9 through 11 class sessions per week. | 6 through 8 class sessions per week. | 4 through 5 class sessions per week. | 1 through 3 class sessions per week. |
| Professional accredited and equivalent. | Internships and residencies: Medical, Dental, Osteopathic. | As established by accrediting association. | As established by accrediting association or entity offering the internship or residency. | As established by accrediting association or entity offering the internship or residency. | As established by accrediting association or entity offering the internship or residency. | As established by accrediting association or entity offering the internship or residency |
| | Nursing, X-ray, medical technology, medical records librarian, physical therapy [4]. | 18 clock hours or 14 semester hours, as appropriate. | 13 through 17 clock hours or 10 through 13 semester hours, as appropriate. | 9 through 12 clock hours or 7 through 9 semester hours, as appropriate. | 5 through 8 clock hours or 4 through 6 semester hours, as appropriate. | 1 through 4 clock hours or less than 4 semester hours, as appropriate. |
| Training establishment. | Apprentice or other on-the-job [5]. | Standard workweek. | ..... | Full time only ... | . | |
| Agricultural ..... | Farm Cooperative [6]. | 10 clock hours net instruction [7]. | 7 clock hours net instruction. | 5 clock hours net instruction. | ..... | No provision. |

[1] Cooperative courses may be measured on a full-time basis only.

[2] When the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are charged full-time tuition, or considered full time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement. When 12 hours is properly certified as full time, VA will measure 9 through 11 hours as ¾ time, 6 through 8 hours as ½ time, 4 through 5 hours as less than ½ time and more than ¼ time, and 1 through 3 hours as ¼ time or less. VA will measure all other undergraduate courses as indicated in the table for undergraduate or professional courses, as appropriate, but when 13 credit hours or the equivalent is certified as full time, ¾ time will be 10 through 12 hours. When, in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, ¾ time, ½ time, less than ½ time and more than ¼ time, or ¼ time or less, VA will accept the certification for measurement purposes.

To meet criteria for full-time measurement in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(k), VA will convert the noncredit deficiency courses on the basis of the applicable measurement criteria, as follows: 18 or 22 clock hours, 4 "Carnegie Units," or 12, 13, or 14 (as appropriate) semester hours equal full time. The credit-hour equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

[3] Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

[4] Supervised study must be excluded.

[5] Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

[6] 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 school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

[7] For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.

[44 FR 62503, Oct. 31, 1979, as amended at 45 FR 73479, Nov. 5, 1980; 48 FR 37992, Aug. 22, 1983; 50 FR 21605, May 28, 1985; 50 FR 43135, Oct. 24, 1985; 54 FR 48549, Dec. 1, 1988; 54 FR 33891, Aug. 17, 1989; 57 FR 29804, July 7, 1992; 57 FR 35628, Aug. 10, 1992; 61 FR 6784, Feb. 22, 1996; 62 FR 55760, Oct. 28, 1997]

## § 21.4271 [Reserved]

## § 21.4272 Collegiate course measurement.

VA will measure a college level course in an institution of higher learning on a credit-hour basis provided all the conditions under paragraph (a) or (b) of this section are met. See also § 21.4273.

(Authority: 38 U.S.C. 3688)

(a) *Degree courses—accredited or candidate.* VA will measure a degree course on a credit-hour basis when—

(1) An institution of higher learning offers the course; and

(2) A nationally recognized accrediting association either—

(i) Accredits the institution of higher learning, or

(ii) Recognizes the institution as a candidate for accreditation; and

(3) The credits earned in the course can be applied towards an associate, baccalaureate or higher degree which is—

(i) Appropriate to the level of the institution of higher learning's accreditation, or

(ii) Appropriate to the level of the institution of higher learning's candidacy for accreditation; and

(4) The course is offered on a semester-hour or quarter-hour basis, and

(5) The degree to which the course credits are applicable either—

(i) Is granted by the institution of higher learning offering the course,

(ii) Is a part of a concurrent enrollment as described in § 21.4233(b), or

(iii) Is being pursued by a nonmatriculated student as provided in § 21.4252(l)(1), (2) or (3).

(b) *Degree courses—nonaccredited.* VA will measure on a credit-hour basis a degree course which does not meet the requirements of paragraph (a) of this section when—

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course leads to an associate, baccalaureate, or higher degree, which is granted by the school offering the degree under authority specifically conferred by a State education agency, and

(3) The school will furnish a letter from a State university or letters from three schools that are full members of a nationally recognized accrediting association. In each letter the State university or accredited school must certify either:

(i) That credits have been accepted on transfer at full value without reservation, in partial fulfillment of the requirements for a baccalaureate or higher degree for at least three students within the last 5 years, and that

at least 40 percent of the subjects within each curriculum, for which credit-hour measurement is sought, has been accepted without reservation by the certifying State university or accredited school, or

(ii) That in the last 5 years at least three students, who have received a baccalaureate or higher degree as a result of having completed the nonaccredited course, have been admitted without reservation into a graduate or advanced professional program offered by the certifying State university or accredited school.

(Authority: 38 U.S.C. 3688(b))

(c) [Reserved]

(d) *Course measurement general.* When an undergraduate course qualifies for credit-hour measurement, VA will measure it according to the table contained in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 3688(a); Pub. L. 99–576)

(e)–(f) [Reserved]

(g) *Course measurement; nonstandard terms.* (1) When a term is not a standard semester or quarter as defined in § 21.4200(b), the Department of Veterans Affairs will determine the equivalent for full-time training by:

(i) Multiplying the credits to be earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and

(ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks for this formula VA will—

(i) Determine the number of days from the beginning to the end of the term as certified by the educational institution, substracting any vacation period of 7 days or more;

(ii) Divide the number of days in the term by 7;

(iii) Disregard a remainder of 3 days or less, and

(iv) Consider 4 days or more to be a whole week.

(Authority: 38 U.S.C. 3688(b))

(3) The quotient resulting from the use of the formula is called equivalent credit hours. VA treats equivalent credit hours as credit hours for measurement purposes.

(Authority: 38 U.S.C. 3688(b))

(h)–(i) [Reserved]

(j) *Course measurement; credit course taken under special circumstances.* If a course is acceptable for credit, but the educational institution does not award credit to the veteran or eligible person because he or she has not met college entrance requirements or for some other valid reason, the Department of Veterans Affairs will measure the course as though it were pursued for credit, provided the veteran or eligible person performs all of the work prescribed for other students who are enrolled for credit.

(Authority: 38 U.S.C. 3688(b))

(k) *Course measurement; noncredit courses.* (1) Except for courses leading to a secondary school diploma or equivalent, the Department of Veterans Affairs will measure noncredit courses given by an institution of higher learning on a quarter- or semester-hour basis if the institution considers them to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the institution of higher learning.

(2) The Department of Veterans Affairs shall measure other noncredit courses under the appropriate criteria of § 21.4270.

(3) Where a school requires a veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet scholastic or entrance requirements, the school will certify the credit-hour equivalent of the noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The Department of Veterans Affairs will measure

the course on the total of the credit hours and credit-hour equivalency.

(Authority: 38 U.S.C. 3688)

[31 FR 6774, May 6, 1966, as amended at 32 FR 13407, Sept. 23, 1967; 41 FR 47930, Nov. 1, 1976; 43 FR 35307, Aug. 9, 1978; 43 FR 49982, Oct. 26, 1978; 48 FR 37992, Aug. 22, 1983; 50 FR 21605, May 28, 1985; 51 FR 6412, Feb. 24, 1986; 54 FR 13065, Mar. 30, 1989; 54 FR 33894, Aug. 17, 1989; 61 FR 6784, Feb. 22, 1996; 72 FR 16977, Apr. 5, 2007]

### § 21.4273 Collegiate graduate.

(a) *In residence.* (1) The Department of Veterans Affairs will measure a nonaccredited graduate or advanced professional course (other than a law course) as provided in § 21.4272. The Department of Veterans Affairs will measure a nonaccredited law course as stated in § 21.4274.

(2) An accredited graduate or advanced professional course, including law as specified in § 21.4274, pursued in residence at an institution of higher learning will be measured in accordance with § 21.4272 unless it is the established policy of the school to consider less than 14 semester hours or the equivalent as full-time enrollment, or the course includes research, thesis preparation, or a comparable prescribed activity beyond that normally required for the preparation of ordinary classroom assignments. In either case a responsible official of the school will certify that the veteran or eligible person is pursuing the course full, three-quarter, one-half, less than one-half but more than one-quarter, or one quarter or less time.

(Authority: 38 U.S.C. 3688(b))

(b) *In absentia.* A responsible official of the school will certify a program of research pursued by a veteran or eligible person in absentia as full, three-fourths, one-half, less than one-half but more than one-quarter, or one-quarter or less time, and the activity will be assessed by the Department of Veterans Affairs accordingly when:

(1) The research activity is defined and organized so as to enable the certifying official to evaluate the time required for its successful pursuit, and

(2) The time certified for the research activity is independent of the time devoted to any employment situation in which the veteran or eligible person might be engaged.

(c) *Undergraduate or combination.* If a graduate student is enrolled in both graduate and undergraduate courses concurrently, or solely in undergraduate courses, VA will measure such an enrollment using the provisions of § 21.4272 or the graduate school's assessment of training time, whichever will result in a higher monthly rate for the veteran.

(Authority: 38 U.S.C. 3668(b); Pub. L. 102–568)

[31 FR 6774, May 6, 1966, as amended at 31 FR 8293, June 14, 1966; 32 FR 4411, Mar. 23, 1967; 50 FR 21606, May 28, 1985; 61 FR 28755, June 6, 1996]

### § 21.4274 Law courses.

(a) *Accredited.* A law course in an accredited law school leading to a standard professional law degree will be assessed as provided in § 21.4273(a).

(b) *Nonaccredited.* A law course leading to a professional law degree, completion of which will satisfy State educational requirements for admission to legal practice, pursued in a nonaccredited law school which requires for admission to the course at least 60 standard semester units of credit or the equivalent in quarter units of credit, will be assessed on the basis of 12 class sessions per week for full-time attendance. If the course does not meet these requirements it will be assessed on the basis of clock hours of attendance per week.

[36 FR 18304, Sept. 11, 1971, as amended at 38 FR 19371, July 20, 1973; 41 FR 47931, Nov. 1, 1976]

### § 21.4275 Practical training courses; measurement.

(a) *Medical and dental residencies and osteopathic internships and residencies.* VA will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(c) of this part if they are accredited and approved in accordance with § 21.4265(a) of this part.

(Authority: 38 U.S.C. 3688(b); Pub. L. 99–576)

(b) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate. The clock hours of attendance may include academic class time, clinical training, and supervised study periods.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be measured on credit hours or clock hours of attendance per week whichever is appropriate.

(c) *Medical and dental specialty courses.* (1) Medical and dental specialty courses offered by a school whether accredited or nonaccredited, shall be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate.

(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories or medical centers which are accredited by a nationally recognized accrediting agency shall be measured on the basis of clock hours of attendance per week.

(d) *Medical and dental assistants courses for the Department of Veterans Affairs.* Programs approved in accordance with the provisions of § 21.4265(d) will be measured on a clock-hour basis as appropriate in accordance with § 21.4270, however, the program will be regarded as full-time instructional training: *Provided,* The combined total of the classroom and other formal instruction portion of the program and on-job-training portion of the program requires 30 or more clock hours of attendance per week.

(e) *Professional training courses.* Nonmedically related professional training courses, such as the clinical pastoral course, shall be measured in semester hours of attendance or clock hours of attendance per week, whichever is appropriate.

(f) *Other practical training courses.* These courses will be measured in semester hours of credit or clock hours of attendance per week, whichever is appropriate, if approved under § 21.4265(f). (See § 21.4265 for approval.)

[41 FR 26684, June 29, 1976, as amended at 43 FR 25429, June 13, 1978; 49 FR 39545, Oct. 9, 1984; 54 FR 33894, Aug. 17, 1989]

### § 21.4277 Discontinuance: unsatisfactory progress, conduct and attendance.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Department of Veterans Affairs. Progress is unsatisfactory if the veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending.

(b) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253.

(c) *Satisfactory attendance.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory attendance in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued.

(Authority: 38 U.S.C. 3474, 3524)

CROSS REFERENCE. *Reports—requirements.* See § 21.4203.

[48 FR 37994, Aug. 22, 1983, as amended at 57 FR 29804, July 7, 1992]

### § 21.4278 Reentrance after discontinuance.

(a) *Conditions permitting reentrance after discontinuance.* A veteran or eligible person may be reentered following discontinuance because of unsatisfactory conduct, progress or attendance only when either of the following sets of conditions exist:

(1) The veteran or eligible person is resuming enrollment at the same educational institution in the same program of education and the educational institution has—

(i) Approved the veteran's or eligible person's reenrollment, and

(ii) Certified it to the Department of Veterans Affairs; or

(2) All of the following exist:

(i) The cause of unsatisfactory conduct, progress or attendance has been removed,

(ii) VA determines that the program which the veteran or eligible person now proposes to pursue is suitable to his or her aptitudes, interests and abilities, and

(iii) If a proposed change of program is involved, the change meets the requirements for approval under §§ 21.4234, 21.5232, 21.7114 and 21.7614 of this part.

(Authority: 38 U.S.C. 3474 and 3524)

(b) *Programs which may be reentered after discontinuance.* Reentrance may be for the same program, for a revised program or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3474 and 3524)

CROSS REFERENCE: *Counseling.* See § 21.4100.

[45 FR 67093, Oct. 9, 1980, as amended at 57 FR 29804, July 7, 1992]

### § 21.4279 Combination correspondence-residence program.

(a) *Requirements for pursuit.* A program of education may be pursued partly in residence and partly by correspondence for the attainment of a predetermined and identified objective under the following conditions:

(1) The correspondence and residence portions are pursued sequentially; that is, not concurrently.

(2) It is the practice of the institution to permit a student to pursue a part of his or her course by correspondence in partial fulfillment of the requirements for the attainment of the specified objective.

(3) The total credit established by correspondence does not exceed the maximum for which the institution will grant credit toward the specified objective.

(4) The educational institution offering the course is accredited by an agency recognized by the Secretary of Education; and

(5) The State approving agency has approved the correspondence-residence course and has verified compliance with the requirement of 38 U.S.C. 3672(e) and § 21.4256(a) that at least 50 percent of those pursuing the correspondence-residence course require six months or more to complete it.

(Authority: 38 U.S.C. 3672(e))

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0575)

(b) *Payment for pursuit of a correspondence-residence program.* The rate of educational assistance payable to a spouse or surviving spouse under 38 U.S.C. Chapter 35 for the residence portion of a correspondence-residence course or program shall be computed as set forth in §§ 21.3131(a) and 21.4270.

(1) The charges for that portion of the course or program pursued exclusively by correspondence will be in accordance with § 21.3131(a) with 1 month entitlement charged for each $404 of cost reimbursed.

(Authority: 38 U.S.C. 3534)

(2) The charges for the residence portion of the program must be separate from those for the correspondence portion.

[38 FR 7394, Mar. 21, 1973, as amended at 39 FR 45237, Dec. 31, 1974; 43 FR 35308, Aug. 9, 1978; 50 FR 19936, May 13, 1985; 61 FR 29296, June 10, 1996; 62 FR 63850, Dec. 3, 1997]

**§ 21.4280 [Reserved]**

## Subpart E [Reserved]

## Subpart F—Education Loans

AUTHORITY: 38 U.S.C. 501, 3537, 3698, 3699, unless otherwise noted.

**§ 21.4500 Definitions.**

(a) *General*. These definitions shall be applicable for subpart F of part 21.

(b) *Education loan*. A loan made by the Department of Veterans Affairs to an eligible spouse or surviving spouse pursuant to 38 U.S.C. 3512(f) and 3698.

(c) *Academic year*. The 9 month period usually from August or September to May or June, which includes generally two semesters or three quarters.

(d) *Loan period*. (1) The Department of Veterans Affairs will make loans normally for a quarter, semester, summer term or two consecutive quarters.

(2) The Department of Veterans Affairs may grant a loan to an eligible spouse or surviving spouse attending a course not organized on a term, quarter or semester basis if the course requires at least 6 months at the full-time rate to complete. A loan will be granted for not more than 6 months at a time.

(Authority: 38 U.S.C. 3512(f), 3698)

(i) The Director of the Department of Veterans Affairs facility of jurisdiction may waive the requirement that such a course must take at least 6 months to complete. Such a waiver of the length of the course shall be granted by the Director only if a school requests one for a course and the Director finds that:

(A) During the previous 2 years at least 75 percent of the students enrolled in the course completed it.

(B) During the previous 2 years at least 75 percent of the persons completing the course found employment in the occupational category for which the course is designed to provide training.

(C) The default rate on all Department of Veterans Affairs education loans ever made to students at the educational institution does not exceed 5 percent or 5 cases, whichever is greater.

(D) The default rate on all loans ever made to students pursuant to loan programs administered by the Department of Education does not exceed 5 percent or five cases, whichever is greater.

(E) The course is at least 3 months long.

(F) The course is approved for full-time attendance only.

(G) No more than 35 percent of the students attending the course are receiving educational assistance from the Department of Veterans Affairs.

(H) The Field Director for the region in which the Department of Veterans Affairs facility is located concurs in the waiver.

(ii) If a school disagrees with a decision of a Director of a Department of Veterans Affairs facility, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education Service. The Director of the Department of Veterans Affairs facility shall forward all requests to the Director, Education Service, who shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Department of Veterans Affairs facility, but shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met.

(iii) A waiver will remain in effect until the date on which the course fails to meet one of the requirements of paragraph (d)(2)(i) of this section. A school which has received a waiver for a course must notify the Director of the Department of Veterans Affairs facility of jurisdiction within 30 days of the date on which one of those requirements is not met.

(Authority: 38 U.S.C. 3512(f), 3698(c))

(e) *Total amount of financial resources*. This term means the total of the following:

(1) The annual adjusted effective income of the eligible spouse or surviving spouse, less Federal income taxes paid or payable by the veteran or other eligible person with respect to such income, as described in paragraph (h) of this section.

(2) The amount of cash assets of the eligible spouse or surviving spouse, as described in § 21.4502(b)(2).

(3) The amount of financial assistance received by the eligible spouse or surviving spouse under the provisions of Title IV of the Higher Education Act of 1965, as amended.

(4) Educational assistance received or receivable for the loan period by the eligible spouse or surviving spouse under 38 U.S.C. chapter 35. This amount shall be exclusive of an education loan.

(5) Financial assistance received by the eligible spouse or surviving spouse under any scholarship or grant other than the one specified in paragraph (e)(3) of this section.

(6) Department of Veterans Affairs work-study allowance received or receivable by the eligible spouse or surviving spouse under 38 U.S.C.3537.

(f) *Actual cost of attendance.* The term *actual cost of attendance* means:

(1) The actual charge per student for tuition, fees, and books;

(2) An allowance for commuting (this allowance will be based on 22.5¢ per mile for distances not exceeding normal commuting distance);

(3) An allowance for other expenses reasonably related to attendance at the institution at which the eligible spouse or surviving spouse is enrolled; and

(4) A room and board allowance that shall be determined as follows:

(i) If the educational institution actually provides the eligible spouse or surviving spouse with room and board, the allowance shall equal the actual charges to him or her for room and board;

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the eligible spouse or surviving spouse, the room and board allowance shall equal either the actual expenses incurred by the eligible spouse or surviving spouse for room and board, or the amount for room and board that the educational institution would have charged the eligible spouse or surviving spouse, had the educational institution provided him or her with room and board, whichever is less; and

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the eligible spouse or surviving spouse for room and board or the amount the eligible spouse or surviving spouse would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board, whichever is less.

(g) *Loan fee.* This shall be a fee collected by discounting the amount of any loan granted to an eligible spouse or surviving spouse by an appropriate amount. The fee shall be collected for each separate loan authorized. The amount of the fee shall be 3 percent of the total loan amount.

(h) *Annual adjusted effective income.* This income shall include:

(1) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Department of Veterans Affairs. This includes income from sources such as Department of Veterans Affairs compensation and pension, disability retirement, unemployment compensation, welfare payments, social security benefits, etc.

(2) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is received by the Department of Veterans Affairs, less:

(i) Authorized deductions for exemptions;

(ii) Itemized or standard deduction, whichever is greater;

(iii) Mandatory withholdings such as Federal and State income taxes, social security taxes, etc.

(Authority: 38 U.S.C. 3512(f), 3698(b))

(i) *School term.* This phrase means:

(1) In the case of an institution of higher learning operating on a quarter system, three consecutive quarters within an ordinary school year;

(2) In the case of an institution of higher learning operating on a semester system, two consecutive semesters within an ordinary school year; or

(3) In the case of an educational institution not an institution of higher learning or in the case of an institution

of higher learning not operating on a quarter or semester system, a period of 9 to 11 months provided:

(i) The program of education is divided into segments, and

(ii) At least one segment is completed prior to or during the 9 to 11-month period.

(Authority: 38 U.S.C. 1682A(e), (repealed, Pub. L. 100–689, section 124(a)))

[40 FR 31764, July 29, 1975, as amended at 44 FR 62505, Oct. 31, 1979; 48 FR 37995, Aug. 22, 1983; 54 FR 34984, Aug. 23, 1989; 61 FR 26115, May 24, 1996]

### § 21.4501 Eligibility.

(a) *General*. Any eligible spouse or surviving spouse shall be eligible to receive an education loan if he or she meets the criteria of this section.

(Authority: 38 U.S.C. 3512(f), 3698)

(b) *Eligibility criteria*. To qualify for an education loan—

(1) The eligible spouse's or surviving spouse's delimiting period as determined by § 21.3046 (a), (b), or (d), or § 21.3047 must have expired;

(2) The eligible spouse or surviving spouse must—

(i) Have financial resources that may reasonably be expected to be expended for education needs and which are insufficient to meet the actual costs of attendance;

(ii) Execute a promissory note payable to the Department of Veterans Affairs, as provided by § 21.4504;

(iii) Have unused entitlement provided under 38 U.S.C. 3511;

(iv) During the term, quarter, or semester for which the loan is granted, be enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under § 21.3046 (a), (b), or (d), or § 21.3047; and

(v) Have been enrolled in a program of education on a full-time basis—

(A) On the date his or her period of eligibility expired under § 21.3046 (a), (b), or (d), or § 21.3047; or

(B) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under § 21.3046 (a), (b), or (d), or § 21.3047, if the delimiting date fell during a school break or summer term.

(Authority: 38 U.S.C. 3512(f), 3698)

(c) *Limitations*. The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(1) Two years after the expiration of the period of eligibility as determined by § 21.3046(a), (b), or (d), or § 21.3047;

(2) The date on which the eligible spouse's or surviving spouse's entitlement is exhausted; or

(3) The date on which the eligible spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by § 21.3046 (a), (b), or (d), or § 21.3047 expired.

(Authority: 38 U.S.C. 3512(f), 3698)

(d) *Exclusions*. No eligible spouse or surviving spouse shall be authorized an education loan if he or she has defaulted on a previous education loan and there is a remaining unliquidated payment due VA.

(Authority: 38 U.S.C. 3512(f), 3698)

[61 FR 26115, May 24, 1996, as amended at 62 FR 51785, Oct. 3, 1997]

### § 21.4502 Applications.

(a) *General*. An eligible spouse or surviving spouse shall make an application for an education loan in the manner prescribed and upon the forms prescribed by the Department of Veterans Affairs. The Department of Veterans Affairs must receive the application no later than the last date of the term, quarter, semester, or 6-month period to which all or part of the loan will apply. The application shall be certified by the school as to the date required from the school by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3471)

(b) *Information*. The application shall provide the Department of Veterans Affairs with the following information and such other information as may be reasonable upon specific request:

(1) A statement of nontaxable income for the student for the current tax year

in which the application is received by the Department of Veterans Affairs; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Department of Veterans Affairs less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, social security taxes, etc.

(2) The amount of all funds of the eligible spouse or surviving spouse on hand on the date of the application including cash on hand, money in a bank or savings and loan association account, and certificates of deposit.

(3) The full amount of the tuition for the course to be paid by the eligible spouse or surviving spouse during the period for which the loan is sought.

(4) The amount of reasonably anticipated expenses for room and board to be expended by the eligible spouse or surviving spouse during the period for which the loan is sought, including a reasonable amount, not to exeed 22.5 cents per mile, for commuting normal distances to classes if the student does not reside on campus. Applications may also provide the Department of Veterans Affairs with a statement of the amount of charges for room and board which the school would have made had the school provided the eligible spouse or surviving spouse with room and board. If the school does not provide room and board, the application may provide the Department of Veterans Affairs with a statement of charges for room and board which the eligible spouse or surviving spouse would have received had he or she been provided room and board at the nearest State college or State university which provides room and board.

(Authority: 38 U.S.C. 3698(b))

(5) The anticipated reasonable cost of books and supplies required for the courses to be taken during the period for which the loan is sought.

[40 FR 31764, July 29, 1975, as amended at 44 FR 62507, Oct. 31, 1979; 48 FR 37996, Aug. 22, 1983; 49 FR 8920, Mar. 9, 1984; 61 FR 26116, May 24, 1996]

**§ 21.4503 Determination of loan amount.**

(a) *General.* The amount of the education loan shall be computed by:

(1) Determining the total amount of financial resources of the eligible spouse or surviving spouse, as defined in § 21.4500(e), which may be reasonably expected to be expended for education needs in any academic year or other loan period.

(2) Subtracting the available resources determined in paragraph (a)(1) of this section from the actual cost of attendance, as defined in § 21.4500(f), to obtain the net amount by which costs exceed the resources available for education needs. If the available resources and the costs are equal, or if the resources exceed the costs, no loan will be authorized.

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(1) If the costs exceed the available resources by $50 or less no loan shall be granted.

(2) The aggregate of the amounts any eligible spouse or surviving spouse may borrow for an education loan may not exceed $2,500 in any one academic year. It also may not exceed an amount determined by multiplying the number of months of educational assistance to which the eligible spouse or surviving spouse would be entitled were it not for the expiration of his or her delimiting period under 38 U.S.C. 3511 times $376.

(Authority: 38 U.S.C. 3512(f), 3698)

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than 6 months.

(Authority: 38 U.S.C. 3698)

(4) The Department of Veterans Affairs shall pay the following maximum amounts for these loan periods:

(i) $1,250 for any semester.

(ii) $830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.

(iii) $1660 for two consecutive quarters.

(iv) $270 per month for a course not leading to a standard college degree if less than 6 months long.

(v) $1660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months long.

(vi) $270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months long.

(Authority: 38 U.S.C. 3512(f), 3698(b))

(5) No amount authorized will be paid by the Department of Veterans Affairs until the eligible spouse or surviving spouse is certified as being enrolled and actually pursuing the course.

(6) An eligible spouse or surviving spouse may receive more than one loan covering separate loan periods, subject to paragraphs (b)(3) and (b)(7) of this section.

(7) If the spouse or surviving spouse has a material change in economic circumstances subsequent to the original application for a loan, he or she may reapply for an increase in an authorized loan or for a loan, if otherwise qualified, if no loan was originally granted. However, the Department of Veterans Affairs will not decrease or revoke a loan once granted, absent fraud in the application.

[40 FR 31765, July 29, 1975, as amended at 48 FR 37996, Aug. 22, 1983; 49 FR 8439, Mar. 7, 1984; 50 FR 19936, May 13, 1985; 61 FR 26116, May 24, 1996]

### § 21.4504 Promissory note.

(a) *General*. The agreement by VA to loan money pursuant to 38 U.S.C. 3512(f) and 3698 to any eligible spouse or surviving spouse shall be in the form of a promissory note which shall include:

(1) The full amount of the loan.

(2) Agreement to pay a fee not to exceed 3 percent for an insurance fund against defaults.

(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student and ending:

(i) For loans of $600 or more, 10 years and 9 months after such date, or

(ii) For loans of less than $600, 1 year and 7 months after such date for the first $50 of the loan plus 1 additional month for each additional $5 of the loan.

(4) A provision for prepayment of all or part of the loan, without penalty, at the option of the borrower.

(b) *Interest*. The promissory note shall advise the student that the loan shall bear interest on the unpaid balance of the loan at a rate comparable to, but not in excess of, the rate of interest charged students at such time on loans insured by the Secretary of Education, Department of Education, under part B of Title IV of the Higher Education Act of 1965. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount.

(Authority: 38 U.S.C. 3698)

(c) *Security*. The loan shall be made without security and without endorsement.

(d) *Default*. Whenever VA determines that a default, in whole or in part, has occurred on any such loan the eligible spouse or surviving spouse shall be notified that the amount of the default shall be recovered from the eligible spouse or surviving spouse concerned in the same manner as other debt due the United States. Once a default has occurred, the eligible spouse's or surviving spouse's subsequent reentrance into training at the half-time or greater rate shall not be the basis for rescinding the default. A default may only be rescinded when VA has been led to create the default as a result of a mistake of fact or law.

(Authority: 38 U.S.C. 3698 (e)(1))

(e) *Death or disability*. If the eligible spouse or surviving spouse dies or becomes permanently and totally disabled, even though he or she ceases to be permanently and totally disabled subsequent to the granting of the loan, the remaining liability of such person for an educational loan shall be discharged.

(f) *Fraud.* Material misrepresentation of fact by the eligible spouse or surviving spouse, including omissions of relevant information, shall render the loan agreement null and void. The deferred payment provisions of the agreement shall not apply in such a case and the full amount of any loan balance shall become due and payable immediately. The amount due shall be recovered from the eligible spouse or surviving spouse in the same manner as any other debt due the United States.

(g) *Signature.* An eligible spouse or surviving spouse may sign both the loan application and the promissory note required and payment of the amounts authorized will be made to such person, notwithstanding his or her minority, unless the person has a legal guardian. In such cases the legal guardian must sign and will be paid the loan amounts.

[40 FR 31765, July 29, 1975, as amended at 48 FR 37997, Aug. 22, 1983; 52 FR 5963, Feb. 27, 1987; 52 FR 7276, Mar. 10, 1987; 61 FR 26116, May 24, 1996]

### § 21.4505 Check delivery.

(a) *General.* Education loans by the Department of Veterans Affairs shall be made by a check payable to the eligible spouse or surviving spouse and shall be mailed promptly to the educational institution in which the eligible spouse or surviving spouse is enrolled for delivery by the educational institution.

(b) *Delivery and certification.* (1) The educational institution, electing to participate in this program, shall deliver an education loan check to the eligible spouse or surviving spouse and shall certify the fact of delivery to the Department of Veterans Affairs immediately upon delivery. If the delivery is not made within 30 days after the institution receives the check, it shall return the check to the Department of Veterans Affairs.

(2) The Director of the Department of Veterans Affairs facility of jurisdiction may direct that education loan checks be sent directly to spouses or surviving spouses when:

(i) The educational institution demonstrates an inability to comply with these requirements; or

(ii) The educational institution fails to provide adequately for the safekeeping of the checks prior to the delivery to the student or return to the Department of Veterans Affairs; or

(iii) The educational institution elects not to participate in this program; or

(iv) There is compelling evidence that the institution is unable to discharge its responsibilities under this program.

(Authority: 38 U.S.C. 3512(f), 3698)

[44 FR 62508, Oct. 31, 1979, as amended at 61 FR 26116, May 24, 1996]

### § 21.4507 Advertising.

(a) *General.* No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Department of Veterans Affairs for eligible spouses and surviving spouses, except as provided in paragraph (b) of this section.

(b) *Form.* The statement which is permitted shall be as follows: ''Certain eligible spouses and surviving spouses may qualify for a maximum educational loan of $2,500 per academic year from the Department of Veterans Affairs depending upon need. Applications for such loans shall be made to the Department of Veterans Affairs on forms prescribed by it.''

(Authority: 38 U.S.C. 3512(f), 3696, 3698(b))

[44 FR 62510, Oct. 31, 1979, as amended at 61 FR 26116, May 24, 1996]

## Subparts F–1—F–3 [Reserved]

## Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

AUTHORITY: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

SOURCE: 45 FR 31, Jan. 2, 1980, unless otherwise noted.

ADMINISTRATIVE

### § 21.5001 Administration of benefits: 38 U.S.C. Chapter 32.

(a) *Delegation of authority*. Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. Chapter 32 and the applicable regulations, precedents, and instructions, as to the program authorized by subpart G of this part.

(Authority: 38 U.S.C. 512(a))

(b) *Administrative provisions*. In administering benefits payable under 38 U.S.C. Chapter 32, VA will apply the following sections:

(1) Section 21.4002—Finality of decisions;

(2) Section 21.4003 (except paragraphs (d) and (e))—Revision of decisions;

(3) Section 21.4005—Conflicting interests;

(4) Section 21.4006—False or misleading statements;

(5) Section 21.4007—Forfeiture;

(6) Section 21.4008—Prevention of overpayments; and

(7) Section 21.4009—Overpayments; waiver or recovery.

(Authority: 38 U.S.C. 3241(a), 3680, 3683, 3685, 3690, 6103)

[61 FR 29029, June 7, 1996]

GENERAL

### § 21.5020 Post-Vietnam era veterans' educational assistance.

Title 38 U.S.C. Chapter 32 provides for a participatory program for educational assistance benefits to eligible veterans and servicepersons. The intent of the Congress for this program is stated in 38 U.S.C. 3201.

(Authority: 38 U.S.C. 3201)

[61 FR 29029, June 7, 1996]

### § 21.5021 Definitions.

For the purposes of subpart G and payment of benefits under 38 U.S.C. chapter 32, the following definitions apply (see also §§ 21.1029 and 21.4200):

(a) *Veteran*—means anyone whose service meets the requirements of § 21.5040.

(Authority: 38 U.S.C. 3202(1))

(b) *Active duty*—means full-time duty in the Armed Forces or as a commissioned officer of the regular or Reserve Corps of the Public Health Service or of the National Oceanic and Atmospheric Administration. It does not include any period during which an individual:

(1) Was assigned full-time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,

(2) Served as a cadet or midshipman at one of the service academies,

(3) Served under the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the military reserve or national guard,

(4) Served in an excess leave without pay status, or

(5) Served in a status specified in § 3.15 of this chapter.

(Authority: 38 U.S.C. 3202)

(c) *State*—means each of the several States, territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Canal Zone.

(Authority: 38 U.S.C. 101(20))

(d) *School, educational institution, institution*. The terms, *school, educational institution*, and *institution* mean—

(1) Any vocational school, business school, correspondence school, junior college, teacher's college, college, normal school, professional school, university or scientific or technical institution;

(2) Any public or private elementary school or secondary school which offers courses for adults; and

(3) An entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 38 U.S.C. 3202(2), 3452(c))

(e) *Participant*—means a person who is participating in the educational benefits program established under Chapter 32. This includes:

(1) A person who has enrolled in and is making contributions by monthly payroll deduction to the *fund*.

(2) Those individuals who have contributed to the *fund* and have not disenrolled (*i.e.*, users or potential users of benefits).

(Authority: 38 U.S.C. 3202)

(3) A person who has enrolled in and is having monthly contributions to the *fund* made for him or her by the Secretary of Defense.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

(4) A person who has made a lump-sum contribution to the fund in lieu of or in addition to monthly contributions deducted from his or her military pay.

(Authority: 38 U.S.C. 3222)

(5) Those individuals who have contributed to the *fund* and—

(i) Have been automatically disenrolled as provided in § 21.5060(b)(3) of this part,

(ii) Whose funds have been transferred to the Treasury Department as provided in § 21.5064(b)(4)(iii) of this part, and

(iii) Who are found to have qualified for an extended period of eligibility as provided in § 21.5042 of this part.

(Authority: 38 U.S.C. 3232;, Pub. L. 99–576)

(f) *Fund*—means that trust fund account established to maintain dollar contributions of the participant (and contributions, if any, from the Department of Defense).

(Authority: 38 U.S.C. 3222)

(g) *Suspends*—means a participant stops contributing to the *fund* (temporarily or permanently).

(h) *Disenrolls*—means a participant terminates participation and forfeits any entitlement to benefits except for a refund of his or her contributions previously made.

(Authority: 38 U.S.C. 3221)

(i) *Hardship* or *other good reasons*—means circumstances considered to be such by the Department of Defense and the Department of Veterans Affairs when referring to suspension or disenrollments, such as illness of the participant or a member of his or her immediate family, unexpected personal expense, etc.

(Authority: 38 U.S.C. 3221(b))

(j) *Benefit period* means:

(1) For a course leading to a standard college degree:

(i) The entire enrollment period certified by the school; or

(ii) That period of time from the beginning of an enrollment period until the end of the individual's delimiting period; or

(iii) That period of time from the beginning of an enrollment period to the date on which the individual's contributions in the fund are exhausted, whichever is the shortest.

(2) For a residence course not leading to a standard college degree or for a correspondence course that period of time from the beginning of the enrollment period as certified by the school or the date the school last certified on the quarterly certification of attendance, whichever is later, to:

(i) The end of the enrollment period;

(ii) The end of the quarter to be certified;

(iii) The last date of the individual's delimiting period; or

(iv) The date on which the individual's contributions to the fund are exhausted, whichever occurs first.

(3) [Reserved]

(4) For apprenticeship and other on-job training that period of time from the beginning date of training or the date last certified on the monthly certification of training to—

(i) The end of the month to be certified;

(ii) The last date of the veteran's delimiting period;

(iii) The date on which the veteran's entitlement is exhausted, whichever occurs first.

(Authority: 38 U.S.C. 3231; Pub. L. 99–576)

(k) *Benefit payment*. The term *benefit payment* means any educational assistance allowance paid under 38 U.S.C.

chapter 32 to a veteran for pursuit of a program of education during a benefit period.

(Authority: 38 U.S.C. 3231, 3232, 3452(b), 3689)

(l) *Spouse*—means a person of the opposite sex who is the wife or husband of the participant, and whose marriage to the participant meets the requirements of §3.1(j) of this chapter.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

(m) *Surviving spouse*—means a person of the opposite sex who is a widow or widower of the participant, and whose marriage to the participant meets the requirements of §3.1(j) or §3.52 of this chapter.

(n) *Child*—(1) for the purposes of §21.5067(a) this term means a natural child, step-child or adopted child of the participant regardless of age or marital status.

(2) For all other purposes this term means a person whose relationship to the participant meets the requirements of §3.57 or §3.58 of this chapter.

(o) *Parent*—means a person whose relationship to the participant meets the requirements of §3.59 of this chapter.

(Authority: 38 U.S.C. 3224)

(p) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3202, 3452(e))

(q) *Program of education*—means—

(1) Any curriculum or combination of subjects or unit courses pursued at a school which is generally accepted as necessary to meet requirements for a predetermined and identified educational, professional or vocational objective;

(2) Subjects or unit courses which fulfill requirements for more than one predetermined and identified objective if all objectives pursued are generally recognized as being related to a single career field;

(3) Any unit course or subject or combination of courses or subjects, pursued by an individual at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636;

(4) A full-time program of apprenticeship or other training on-the-job approved as provided in §21.4261 or §21.4262 as appropriate; or

(5) A licensing or certification test, the passing of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3202(2), 3452(b), 3689)

(r) *Educational objective*—An *educational objective* is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.

(Authority: 38 U.S.C. 3202(2), 3452(b))

(s) *Professional or vocational objective*—A *professional or vocational objective* is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3202(2))

(t) *Deficiency course*—The term *deficiency course* means any secondary level course or subject not previously

completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 3241; Pub. L. 100–689)

(u) *Refresher course*—The term *refresher course* means—

(1) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the individual's active military service and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 3241(a); Pub. L. 100–689, Pub. L. 101–237).

(v) *Disabling effects of chronic alcoholism.* (1) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3232, 3462; Pub. L. 100–689)

(w) *Continuous service* means—

(1) Active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(2) Time lost while on active duty will not interrupt the continuity of service. Time lost includes, but is not limited to, excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3232(a); Pub. L. 101–237)

(x) *Persian Gulf War.* The term ''Persian Gulf War'' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33))

(y) *Alternative teacher certification program.* The term *alternative teacher certification program* for the purposes of determining whether an entity offering such a program is a school, educational institution or institution, as defined in paragraph (d)(3) of this section, means a program leading to a teacher certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 38 U.S.C. 3202(2), 3452(c))

(z) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3202, 3452(b), 3501(a)(5), 3689)

(aa) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

(bb) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and

that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test, but does not issue the license or certificate;

(ii) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51743, Nov. 17, 1982; 52 FR 3429, Feb. 4, 1987; 53 FR 34495, Sept. 7, 1988; 55 FR 31581, Aug. 3, 1990; 57 FR 38614, Aug. 26, 1992; 58 FR 34369, June 25, 1993; 61 FR 1526, Jan. 22, 1996; 65 FR 5786, Feb. 7, 2000; 72 FR 16977, Apr. 5, 2007]

### § 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* (1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under—

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 38 U.S.C. 3033(a), 3322(a))

(b) *Total eligibility under more than one program.* (1) No one may receive a combination of educational assistance benefits under 38 U.S.C. Chapter 32 and any of the following provisions of law for more than 48 months (or part-time equivalent):

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(iv) 10 U.S.C. chapter 1606 (Montgomery GI Bill-Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(2) No one may receive assistance under 38 U.S.C. Chapter 31 in combination with assistance under 38 U.S.C. Chapter 32 in excess of 48 months (or

the part-time equivalent) unless VA determines that additional months of benefits under 38 U.S.C. Chapter 31 are necessary to accomplish the purposes of a rehabilitation program.

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

[51 FR 12852, Apr. 16, 1986; 51 FR 16517, May 5, 1986, as amended at 53 FR 34495, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 29029, June 7, 1996; 74 FR 14670, Mar. 31, 2009]

### § 21.5023 Nonduplication; Federal programs.

An individual may not receive educational assistance allowance under 38 U.S.C. Chapter 32, if the individual is:

(a) On active duty and is pursuing a course of education which is being paid for, in whole or in part, by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or

(Authority: 38 U.S.C. 3241, 3681)

(b) Attending a course of education or training paid for, in whole or in part, under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3241, 3681)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51744, Nov. 17, 1982; 61 FR 7217, Feb. 27, 1996]

## CLAIMS AND APPLICATIONS

### § 21.5030 Applications, claims, and time limits.

(a) To become a participant an individual must apply to his or her Service Department on forms prescribed by the Service Department and/or the Secretary of Defense.

(b) Rules and regulations of the applicable Service Department and/or the Department of Defense shall determine if the application is timely.

(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

(1) Section 21.1029—Definitions.

(2) Section 21.1030—Claims.

(3) Section 21.1031—VA responsibilities when a claim is filed.

(4) Section 21.1032—Time Limits

(Authority: 38 U.S.C. 3232, 3241, 3471; Pub. L. 94–502, Pub. L. 99–576)

[45 FR 31, Jan. 2, 1980, as amended at 48 FR 3368, Jan. 25, 1983; 53 FR 34495, Sept. 7, 1988; 64 FR 23772, May 4, 1999]

## ELIGIBILITY

### § 21.5040 Basic eligibility.

(a) *Individuals not on active duty.* Whether an individual has basic eligibility under 38 U.S.C. Chapter 32 for educational assistance depends upon when he or she entered the military service, the length of that service, and the character of that service.

(Authority: 38 U.S.C. 3202).

(b) *Service requirements for all individuals not on active duty.* (1) An individual not on active duty:

(i) Must have entered the military service after December 31, 1976, and before July 1, 1985;

(Authority: 38 U.S.C. 3202, Pub. L. 99–576)

(ii) Must not have and except as provided in paragraph (g) of this section must not have had basic eligibility under 38 U.S.C. Chapter 34;

(iii) Must have received an unconditional discharge or release under conditions other than dishonorable from any period of service upon which eligibility is based;

(iv) Must either have:

(A) Served on active duty for a least 181 continuous days, or

(B) Been discharged or released from active duty for a service-connected disability.

(2) The Department of Veterans Affairs will consider that the veteran has an unconditional discharge or release if:

(i) The individual was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met.

(3) The provisions of § 3.12 of this chapter as to character of discharge and § 3.13 of this chapter as to conditional discharges are applicable.

(Authority: 38 U.S.C. 3202)

(c) *Additional active duty service requirements for some individuals not on active duty—Chapter 32.* (1) Unless exempted by paragraph (d) of this section, persons who originally enlist in a regular component of the Armed Forces after September 7, 1980, or who enter on active duty after October 16, 1981 (either as an enlisted member or an officer) to be eligible under 38 U.S.C. Chapter 32, must first complete the shorter of:

(i) 24 continuous months of active duty, or

(ii) The full period for which the individual was called or ordered to active duty.

(2) For the purpose of paragraph (c)(1) of this section the Department of Veterans Affairs considers that an enlisted person originally enlisted in a regular component of the Armed Forces on the date he or she entered on active duty even through he or she may have signed a delayed-entry contract on an earlier date.

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(d) *Individuals exempt from additional active duty requirements.* (1) An individual who originally enlists in a regular component of the Armed Forces after September 7, 1980, or who enters on active duty after October 16, 1981 (either as an enlisted member or officer), will be eligible to receive benefits under 38 U.S.C. Chapter 32 based upon the ensuing period of active duty, and is exempt from the provisions of paragraph (c) of this section if he or she subsequently:

(i) Is discharged or released from active duty:

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or

(ii) Is found by Department of Veterans Affairs to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in §3.4(b) of this chapter. Once the Department of Veterans Affairs makes this finding, the exemption will continue to apply even if the disability subsequently improves and becomes noncompensable.

(2) An individual who enters on a period of active duty after October 16, 1981, is also exempt from the provisions of paragraph (c) of this section if he or she:

(i) Previously completed a continuous period of active duty of at least 24 months, or

(ii) Was discharged or released from a previous period of active duty under 10 U.S.C. 1171 (early-out discharge).

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(e) *Savings provision.* An individual may become a participant and establish basic eligibility under the provisions of this section based upon a period of active duty service which began before October 16, 1981. He or she would not lose the basic eligibility based upon that period of service if, following a release from active duty, the individual reenters on active duty after October 16, 1981, and fails to meet the requirements of paragraph (c) of this section or qualify for an exemption under paragraph (d) of this section. He or she will receive a refund of any contributions he or she may make to the fund during the second period of active duty. See §21.5065.

(Authority: 38 U.S.C. 3202, 5303A)

(f) *Individuals on active duty.* To establish basic eligibility under 38 U.S.C. Chapter 32 for educational assistance an individual on active duty:

(1) Must have entered into military service after December 31, 1976, and before July 1, 1985.

(Authority: 38 U.S.C. 3202, Pub. L. 96–466, Pub. L. 99–576)

(2) Must have served on active duty for a period of 181 or more continuous days after December 31, 1976, and

(3) If not enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate, must have completed the lesser of the following two periods of active duty:

(Authority: 38 U.S.C. 3231(b))

(i) The individual's first obligated period of active duty which began after December 31, 1976, or

(ii) The individual's period of active duty which began after December 31, 1976, and which is 6 years in length,

(4) If enrolled in a course, courses or a program of education leading to a seondary school diploma or equivalency certificate, the individual:

(i) Must be an enlisted member of the Armed Forces,

(ii) Must be a participant

(iii) Must be training during the last 6 months of his or her first period of active duty, or any time thereafter, and

(5) If he or she originally enlisted after September 7, 1980, must have completed at least 24 months of his or her original enlistment

(Authority: 38 U.S.C. 3231(b), 10 U.S.C. 977)

(g) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 10 U.S.C. chapter 1606.* An individual who serves in the Selected Reserves may not receive credit for that service under both 38 U.S.C. Chapter 32 and 10 U.S.C. Chapter 1606. If he or she wishes to receive educational assistance based upon this service, the veteran must elect the chapter under which he or she will receive benefits.

(1) This election must be in writing and submitted to VA.

(2) If a veteran elects to receive educational assistance under 38 U.S.C. Chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 1606, but based upon a period of service which preceded the period for which an election was made, will not serve to make the election irrevocable.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101–237)

[48 FR 36577, Aug. 12, 1983, as amended at 51 FR 12852, Apr. 16, 1986; 53 FR 34496, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 20728, May 8, 1996; 61 FR 29029, June 7, 1996]

### § 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:

(1) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or

(2) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released—

(i) For a service-connected disability;

(ii) For a medical condition which preexisted such service and which VA determines is not service-connected;

(iii) For hardship; or

(iv) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3231; Pub. L. 94–502, Pub. L. 99–576, Pub. L. 101–237)

(b) *Use of entitlement.* The individual—

(1) May use his or her entitlement at anytime during the 10-year period after the last discharge or release from active duty or other period as provided pursuant to § 21.5042 of this part;

(2) Is not required to use his or her entitlement in consecutive months.

(Authority: 38 U.S.C. 3232, Pub. L. 94–502, Pub. L. 99–576)

[53 FR 34496, Sept. 7, 1988, as amended at 57 FR 38614, Aug. 26, 1992]

**§21.5042 Extended period of eligibility.**

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by §21.5041 of this part provided—

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See §21.5021(v).

(Authority: 38 U.S.C. 105, 3232, 3462; Pub. L. 99–576, Pub. L. 100–689)

(b) *Application.* The veteran must apply for the extended period of eligibility in time for VA to receive the application by the later of the following dates:

(1) One year from the last date of the delimiting period otherwise applicable to the veteran under §21.5401 of this part, or

(2) One year from the termination date of the period of the veteran's mental or physical disability.

(Authority: 38 U.S.C. 3232, Pub. L. 99–576)

(c) *Qualifying period of disability.* (1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.

(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined under §21.5030(c)(3) of this part occurs after November 17, 1988.

(Authority: 38 U.S.C. 105; Pub. L. 100–689)

(3) Evidence must be presented which clearly establishes that the veteran's disability made pursuit of his or her program medically infeasible during the veteran's original period of eligibility as determined by §21.5041 of this part. A period of disability following the end of the original disability period will not be a basis for extension.

(4) VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 3232, Pub. L. 99–576)

(d) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by §21.5041 of this part, and

(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(4) For a veteran whose entitlement to an extended period of eligibility is dependent upon the disabling effects of chronic alcoholism, may not begin before November 18, 1988.

(Authority: 38 U.S.C. 105, 3232; Pub. 99–576, Pub. L. 100–689)

(e) *Determining the length of extended periods of eligibility.* A veteran's extended period of eligibility shall be based upon the qualifying period of disability, and determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or

her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.5041 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(f) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

[53 FR 34496, Sept. 7, 1988, as amended at 55 FR 31582, Aug. 3, 1990]

PARTICIPATION

### § 21.5050 Application requirements for participation.

(a) An individual, who is otherwise eligible to become a participant, must apply to the Service Department under which he or she serves upon forms prescribed by the Service Department and/or Secretary of Defense.

(b) No application to participate may be made before entry upon active duty.

(c) Each application must be submitted in time to permit the Service Department to make the required deduction from the individual's military pay for at least 1 month before the applicant's discharge or release from active duty.

(Authority: 38 U.S.C. 3221)

### § 21.5052 Contribution requirements.

(a) *Minimum period of participation.* Each individual who agrees to participate must do so for a minimum period of 12 consecutive months, unless the participant:

(1) Is allowed to disenroll for hardship reasons;

(2) Is permitted to suspend participation for hardship reasons;

(3) Is discharged or released from active duty;

(4) Otherwise ceases to be legally eligible to participate; or

(5) Elects to make a lump-sum contribution which, when taken together with his or her other contributions, equals the equivalent of at least 12 months' participation.

(Authority: 38 U.S.C. 3221, 3222)

(b) *Amount of monthly contribution.* The individual shall specify the amount of his or her contribution to the fund.

(1) The contribution shall be at least $25 per month but not more than $100 per month.

(2) The contribution shall be evenly divided by five. See § 21.5292 for contributions made furing the 1-year pilot program.

(c) *Amount of total contribution.* An individual may contribute for the number of months required to reach a total contribution of $2,700.

(d) *Changing the monthly contribution.* An individual may increase or decrease the amount of the monthly contribution, but may not do so more than once a month.

(e) *Prohibition against contributing.* An individual may not make contributions to the fund after the date of his or her discharge. The VA does not consider the return of an unnegotiated refund check to be a contribution. A person who returns a refund check remains continuously eligible for benefits.

(Authority: 38 U.S.C. 3222)

(f) *Lump-sum contribution.* After September 30, 1980 an individual may make

a lump-sum contribution or contributions in place of or in addition to monthly contributions.

(1) A lump-sum contribution:

(i) Must be evenly divisible by five,

(ii) Must, when taken together with any monthly contributions the participant may have made or may agree to make, equal or exceed 12 months' participation, and

(iii) Must not exceed $2,700 when taken together with any monthly contributions the participant may have made or may agree to make.

(2) The Department of Veterans Affairs will consider the lump-sum contributions to have been made by monthly deductions from the participant's military pay at the rate of $100 per month unless the participant specifies a different rate which must be

(i) No lower than $25 per month,

(ii) No higher than $100 per month, and

(iii) Evenly divisible by five.

(3) If otherwise eligible to make contributions, a participant:

(i) May make a lump-sum contribution to cover any period of his or her active duty. This may entail a retroactive period, including one which—

(A) Begins after December 31, 1976, and before October 1, 1980, or

(B) Although made after October 27, 1986, includes all or part of the period beginning on July 1, 1985, and ending on October 27, 1986.

(Authority: Pub. L. 99–576, sec. 309(c))

(ii) May make a lump-sum contribution which has the effect of increasing the amount of a monthly contribution the participant made previously, but the payment cannot have the effect of increasing the monthly contribution to an amount greater than $100;

(iii) May make a lump-sum payment to cover a period for which he or she previously obtained a refund;

(iv) May not make a lump-sum payment to cover a period during which the participant was not on active duty or will not be on active duty.

(4) A participant may make as many lump-sum contributions as he or she desires, but he or she may not make more than one lump-sum contribution per month.

(Authority: 38 U.S.C. 3222(d)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51744, Nov. 17, 1982; 48 FR 50530, Nov. 2, 1983; 53 FR 617, Jan. 11, 1988; 53 FR 34496, Sept. 7, 1988]

### § 21.5053 Restoration of contributions (Persian Gulf War).

(a) *Restoration of contributions when no entitlement is charged.* If the provisions of § 21.5072(i) require that a veteran's entitlement not be charged for a payment or payments he or she received, the amount of the veteran's contributions which were included in the payment or payments will be restored to the fund by the Department of Defense.

(Authority: 38 U.S.C. 3235; Pub. L. 102–127) (Oct. 10, 1991)

(b) *Restored contributions are treated like other contributions.* VA will treat contributions which have been restored under paragraph (a) of this section as though the veterans had contributed them for all purposes including—

(1) Computing the veteran's monthly rates and benefit payments under § 21.5138, and

(2) Determining any refund which may become due the veteran under §§ 21.5064 and 21.5065.

(Authority: 38 U.S.C. 3235; Pub. L. 102–127) (Oct. 10, 1991)

[58 FR 34369, June 25, 1993]

### § 21.5054 Dates of participation.

(a) *General.* An individual may participate after December 31, 1976. An individual was not eligible for benefits before July 1, 1977, unless discharged after January 1, 1977, for a service-connected condition. The first date on which an individual on active duty enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate may receive benefits is subject to the eligibility requirements of § 21.5040(f)(4) and (5).

(Authority: 38 U.S.C. 3231 (a) and (b))

(b) *Termination of right to begin participation.* (1) Except as provided in

paragraph (b)(3) of this section, no individual on active duty in the Armed Forces may initially enroll after June 30, 1985.

(2) An initial enrollment occurs when a serviceperson who has never contributed to the fund—

(i) First makes a lump-sum payment to the fund, or

(ii) First authorizes an allotment to VA for deposit in the fund. See 32 CFR 59.3(b)(10).

(3) Notwithstanding the provisions of paragraph (b)(1) of this section, any individual on active duty in the Armed Forces who was eligible to enroll on June 30, 1985, may enroll at any time during the period beginning on October 28, 1986, and ending on March 31, 1987.

(Authority: 38 U.S.C. 3221(a), Pub. L. 99–576, sec. 309(c); Pub. L. 99–576)

[51 FR 2695, Jan. 21, 1986; 51 FR 12321, Apr. 10, 1986, as amended at 53 FR 34496, Sept. 7, 1988]

### § 21.5058 Resumption of participation.

(a) *General.* An eligible individual, who remains otherwise eligible, may resume active contribution to the fund, if he or she has:

(1) Voluntarily elected to suspend following completion of minimum participation;

(2) Suspended at any time for reasons of hardship; or

(3) Received a discharge or release from active duty after participation and reenlisted.

(Authority: 38 U.S.C. 3221)

(b) *Disenrollment in order to participate in other educational programs.* A person who elects to disenroll in order to receive educational assistance allowance under 38 U.S.C. chapter 34 or to receive an officer adjustment benefit payable under sec. 207, Pub. L. 101–366, 104 Stat. 442, may not reenroll if he or she has negotiated a check under the provisions of law governing the program elected in lieu of the Post-Vietnam Era Veterans' Educational Assistance Program. A person who elects to disenroll in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045, may not reenroll.

(Authority: 38 U.S.C. 3018A, 3018B, 3018C, 3202(1), 3222)

(c) *Reenrollment permitted following some disenrollments.* (1) Except as provided in paragraph (b) of this section, a person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(2) If a person does reenroll, he or she may ''repurchase'' entitlement by tendering previously refunded contributions which he or she received upon disenrollment, subject to the conditions of § 21.5052(f).

(Authority: 38 U.S.C. 3221, 3222)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 29474, June 2, 1981; 47 FR 51745, Nov. 17, 1982; 51 FR 12853, Apr. 16, 1986; 58 FR 38058, July 15, 1993; 58 FR 40468, July 28, 1993; 61 FR 7217, 7218, Feb. 27, 1996; 61 FR 29029, June 7, 1996]

### § 21.5060 Disenrollment.

(a) *Voluntary disenrollment.* (1) An individual may disenroll at anytime after the initial 12 months of participation.

(2) At any time within the initial 12 months of participation, an individual may elect to disenroll for reasons of personal hardship only.

(Authority: 38 U.S.C. 3221(a), (b))

(b) *Nonvoluntary disenrollment.* The Department of Veterans Affairs shall disenroll automatically an individual who meets any of the following sets of conditions:

(1) The individual is discharged or released from his or her initial obligated period of active service and:

(i) The discharge or release is under dishonorable conditions, or

(ii) A statutory bar to benefits administered by the Department of Veterans Affairs exists for the individual;

(2) The individual participated only after completion of the initial or subsequent period of active service; is discharged or released and:

(i) The discharge or release is under dishonorable conditions, or

(ii) A statutory bar to benefits exists for the individual; or

(3) The individual has not utilized all of his or her entitlement to benefits within the 10-year period stated in §21.5041, and at the end of one year thereafter has not filed a claim for educational assistance allowance as provided in §21.5030(c).

(Authority: 38 U.S.C. 101, 3225, 3232)

CROSS REFERENCE: *Refunds without disenrollment*. See §21.5065.

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 59247, Dec. 4, 1981; 51 FR 12853, Apr. 16, 1986; 58 FR 31910, June 7, 1993; 61 FR 29030, June 7, 1996]

### §21.5062 Date of disenrollment.

An individual will be disenrolled effective:

(a) The date the Department of Veterans Affairs or the Service Department determines he or she has ceased to be legally entitled to participate; or

(b) The date the individual negotiates the check which represents a refund of his or her remaining contributions to the fund, whichever is earlier.

(Authority: 38 U.S.C. 3221(d))

### §21.5064 Refund upon disenrollment.

(a) *General*. A disenrolled individual will be refunded all contributions made by him or her to the fund. He or she will be ineligible to receive benefits under §§21.5130 and 21.5138, unless the individual reenrolls as a participant and agrees to participate in a new period of 12 consecutive months as provided in §21.5058. The amount of the contributions refunded upon disenrollment shall be limited to the amount of his or her contributions not utilized to receive benefits as of the date of disenrollment, less any outstanding debts resulting from overpayments of educational assistance allowance.

(Authority: 38 U.S.C. 3223)

(b) *Effective date of refund*. The date upon which the refund of contributions, if any, will be made shall be determined as follows:

(1) If an individual voluntarily disenrolls from the program before discharge or release from active duty, VA will refund the individual's unused contributions:

(i) On the date of the participant's discharge or release from active duty; or

(ii) Within 60 days of VA's receipt of notice of the individual's discharge or disenrollment; or

(iii) As soon as possible after VA's receipt of notice indicating that an earlier refund is needed due to hardship or for other good reasons.

(Authority: 38 U.S.C. 3223(b), 3232)

(2) If an individual voluntarily disenrolls from the program after discharge or release from active duty under other than dishonorable conditions, his or her contributions shall be refunded within 60 days of receipt by VA of an application for a refund from the individual.

(Authority: 38 U.S.C. 3202(1)(A), 3223(c), 3232(b))

(3) If an individual is disenrolled because he or she is discharged or released from active duty under dishonorable conditions, the individual's contributions remaining in the fund shall be refunded:

(i) On the date of the individual's discharge or release from active duty; or

(ii) Within 60 days of receipt of notice by the Department of Veterans Affairs of the individual's discharge or release, whichever is the later.

(4) If an individual is disenrolled because he or she has not utilized all of his or her entitlement to benefits within the 10-year delimiting period, the individual's contributions remaining in the fund shall be refunded.

(i) The Department of Veterans Affairs shall notify the individual that the delimiting period has expired and shall state the amount of unused contributions.

(ii) The Department of Veterans Affairs shall make the refund only if the individual requests it.

(iii) If VA does not receive a request within 1 year from the date that the individual is notified of his or her entitlement to a refund, VA will presume that the individual's whereabouts is unknown. The funds on deposit for that

individual will be transferred in accordance with the provisions of section 1322(a), Title 31, United States Code.

(Authority: 38 U.S.C. 101, 3223, 3232; Pub. L. 94–502, Pub. L. 99–576)

[45 FR 31, Jan. 2, 1980, as amended at 51 FR 46655, Dec. 24, 1986; 53 FR 617, Jan. 11, 1988; 53 FR 34497, Sept. 7, 1988; 58 FR 38058, July 15, 1993; 61 FR 29030, June 7, 1996]

**§ 21.5065 Refunds without disenrollment.**

(a) *Refunds made without disenrollment following a discharge or release under dishonorable conditions*—(1) *A discharge or release under dishonorable conditions may result in a partial refund of contributions.* If an individual who would have been eligible, but for the fact of his or her reenlistment, for the award of a discharge or release under conditions other than dishonorable at the time he or she completed an obligated period of service, later receives a discharge or release under dishonorable conditions, the Department of Veterans Affairs may refund a portion of his or her contribution.

(Authority: 38 U.S.C. 101, 3223)

(2) *Amount of refund.* The Department of Veterans Affairs shall refund to the individual all of his or her remaining contributions made to the fund after the individual completed the obligated period of service.

(Authority: 38 U.S.C. 101, 3223)

(3) *Date of refund.* The Department of Veterans Affairs shall refund all monies due the individual:

(i) On the date of the individual's discharge or release from active duty; or

(ii) Within 60 days of receipt by the Department of Veterans Affairs of notice of the individual's discharge or release, whichever is later.

(Authority: 38 U.S.C. 101, 3223, 3232)

(b) *Refunds made without disenrollment following a short period of active duty.* (1) An individual who has contributed to the fund during more than one period of active duty may be required to receive a refund of those contributions made during the most recent period of active duty. When an individual who meets all the criteria in paragraph (b)(2) of this section is discharged, the Department of Veterans Affairs will refund all contributions he or she made during the most recent period of active duty unless the individual meets one or more of the criteria stated in either paragraph (b)(4) or (5) of this section. If he or she meets one of those criteria, the contributions will not be refunded unless the individual voluntarily disenrolls.

(2) Unless a compulsory refund is prohibited by paragraph (b)(4) or (5) of this section, the Department of Veterans Affairs will refund all contributions made by an individual during the most recent period of active duty when the individual:

(i) Completed at least one period of active duty before the most recent one during which he or she established entitlement to Post-Vietnam Era Veterans' Educational Assistance;

(ii) Reentered on his or her most recent period of active duty after October 16, 1981;

(iii) Contributed to the fund during his or her most recent period of active duty; and

(iv) Is discharged.

(3) The circumstances which prohibit an automatic refund of monies contributed during the individual's most recent period of active duty do not relate only to the most recent period of active duty which began after October 16, 1981, but also the individual's prior periods of active duty regardless of whether they began before, after or on October 16, 1981.

(4) Meeting one or more of the following criteria concerning periods of active duty before the most recent one will be sufficient to prohibit a compulsory refund of contributions made during the most recent period of active duty. The individual:

(i) Before the most recent period of active duty began, completed at least one continuous period of active duty of at least 24 months, or

(ii) Was discharged or released under 10 U.S.C. 1171 (early-out discharge) from any period of active duty before the most recent one.

(5) Meeting one or more of the following criteria concerning the most recent period of active duty will be sufficient to prohibit a compulsory refund of contributions made during the most recent period of active duty. The individual:

(i) For the most recent period of active duty completes 24 months of continuous active duty, or the full period for which the individual was called or ordered to active duty, whichever is shorter; or

(ii) Is discharged or released from the most recent period of active duty under 10 U.S.C. 1171 (early-out discharge) or 1173 (hardship discharge); or

(iii) Is discharged or released from the most recent period of active duty for a disability incurred or aggravated in line of duty; or

(iv) Has a service-connected disability which give him or her basic entitlement to disability compensation as described in § 3.4(b) of this chapter.

(6) In computing time served for the purpose of this paragraph, the individual is not entitled for credit for service as specified in § 3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(7) The Department of Veterans Affairs shall refund all monies due the individual:

(i) On the date of the individual's discharge or release from active duty; or

(ii) Within 60 days of receipt of notice by the Department of Veterans Affairs of the individual's discharge or release, whichever is later.

(Authority: 38 U.S.C. 3202, 3223, 3232, 5303A)

(c) *Refunds following an election under § 21.5040(b).* If a veteran described in § 21.5040(h) makes an election to have a period of service credited toward his or her eligibility and entitlement under 10 U.S.C. Chapter 1606, he or she will be required to receive a refund of any contributions he or she made to the fund during that period of service.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101–237)

[48 FR 36578, Aug. 12, 1983, as amended at 57 FR 38614, Aug. 26, 1992; 61 FR 20728, May 8, 1996]

**§ 21.5066 Suspension of participation.**

An individual may suspend participation in the program without disenrolling. If the individual suspends participation, he or she may resume participation at any time thereafter while on active duty.

(a) An individual may suspend participation any time after 12 months of participation.

(b) An individual who has participated for less than 12 consecutive months may not suspend unless the Secretary of Defense determines that the reason for the suspension is due to a personal hardship.

(Authority: 38 U.S.C. 3221)

**§ 21.5067 Death of participant.**

(a) *Disposition of unused contributions.* If an individual dies, the Department of Veterans Affairs shall pay the amount of his or her unused contributions to the fund to the living person or persons in the order listed in this paragraph.

(1) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance policy;

(2) The surviving spouse of the individual;

(3) The surviving child or children of the individual, in equal shares;

(4) The surviving parent or parents of the individual in equal shares.

(b) *Payments to the individual's estate.* If none of the persons listed in paragraph (a) of this section is living, the Department of Veterans Affairs shall pay the amount of the individual's unused contributions to the fund to the individual's estate.

(Authority: 38 U.S.C. 3224)

(c) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the veteran's death is payable under the provisions of § 3.1000 of this chapter. For this purpose accrued benefits include the portion of the benefit represented by the individual's contribution as well as the portion included by the Department of Veterans Affairs and the Department of Defense.

(Authority: 38 U.S.C. 5121)

[47 FR 51745, Nov. 17, 1982]

ENTITLEMENT

### § 21.5070 Entitlement.

A participant is entitled to a monthly benefit for periods of time during which the individual is enrolled in, and satisfactorily pursuing, an approved program of education. The amount of the benefit will vary from individual to individual and, in some instances, from month to month as provided in § 21.5138.

(Authority: 38 U.S.C. 3231)

### § 21.5071 Months of entitlement allowed.

(a) *Entitlement based on monthly contributions.* The Department of Veterans Affairs will credit an individual with 1 month of entitlement for each month he or she contributes to the fund up to a maximum of 36 months or its equivalent in part-time training.

(Authority: 38 U.S.C. 3231)

(b) *Entitlement based on lump-sum contributions.* If an individual elects to make a lump-sum contribution, the Department of Veterans Affairs will credit an individual with 1 month of entitlement for:

(1) Every $100 included in the lump sum, or

(2) Every amount included in the lump sum which:

(i) Is at least $25 but no more than $100,

(ii) Is evenly divisible by five, and

(iii) Is specifically designated by the individual at the time he or she makes the contribution.

(Authority: 38 U.S.C. 3222(d))

(c) *Entitlement based on both monthly and lump-sum contributions.* (1) If the individual makes both monthly and lump-sum contributions, the Department of Veterans Affairs will:

(i) Compute the entitlement due to each type of contribution separately under paragraphs (a) and (b) of this section, and

(ii) Will combine the results of the computations to determine the individual's total entitlement.

(2) In no event will an individual's entitlement exceed 36 months or its equivalent in part-time training.

(Authority: 38 U.S.C. 3222(d), 3231)

[47 FR 51745, Nov. 17, 1982, as amended at 48 FR 50530, Nov. 2, 1983]

### § 21.5072 Entitlement charge.

The Department of Veterans Affairs shall determine the entitlement charge for each payment in the same manner for all individuals regardless of whether they are on active duty. Unless the circumstances described in paragraph (i) of this section apply to a servicemember or veteran, VA will use paragraphs (a) through (h) of this section to determine an entitlement charge.

(a) *General.* (1) Except as provided in paragraphs (b) through (i) of this section, VA will make a charge against entitlement as follows:

(i) The Department of Veterans Affairs will charge an individual who is a full-time student 1 month's entitlement for each monthly benefit paid to him or her.

(ii) The Department of Veterans Affairs will charge an individual who is other than a full-time student 1 month's entitlement for each sum of money paid equivalent to what the individual would have been paid had he or she been a full-time student for 1 month.

(2) When the computation results in a period of time other than a full month, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3231)

(b) *Secondary school program.* (1) The Department of Veterans Affairs will make no charge against the entitlement of an individual:

(i) Who is pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate, and

(ii) Whose educational assistance allowance is the monthly rate of the tuition and fees being charged to him or her for the course.

(2) The Department of Veterans Affairs will make a charge (in the same manner as for any other residence training) against the entitlement of an individual who:

(i) Is pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate, and

(ii) Elects to receive educational assistance allowance calculated according to §21.5136.

(Authority: 38 U.S.C. 3241, 3491)

(c) *Correspondence training courses.* (1) A charge against the period of entitlement for a program consisting exclusively of correspondence training will be made on the basis of 1 month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under §21.5138(a)(2)(viii), which is paid to the individual as an educational assistance allowance for this training. When computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at by applying the formula is determined to be $150 at the time a benefit program for correspondence training is computed, the individual will be charged 1 month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

(Authority: 38 U.S.C. 3231(c))

(d) *Apprenticeship or other on-job training.* (1) The VA will determine the entitlement charge for a veteran in apprenticeship or other on-job training as stated in this paragraph.

(2) The entitlement charge will be—

(i) 75 percent of a month for those months for which the veteran's monthly payment is based upon 75 percent of the monthly benefit otherwise payable to him or her;

(ii) 55 percent of a month for those months for which the veteran's monthly payment is based upon 55 percent of the monthly benefit otherwise payable to him or her; and

(iii) 35 percent of a month for those months for which the veteran's monthly payment is based upon 35 percent of the monthly benefit otherwise payable to him or her.

(3) The charge against the veteran's entitlement will be prorated if—

(i) The veteran's enrollment period ends in the middle of a month,

(ii) The veteran's monthly rate is reduced in the middle of a month, or

(iii) The veteran's monthly payment is reduced because he or she worked less than 120 hours during the month. In this instance the number of hours worked will be rounded to the nearest multiple of eight, and the entitlement charge will be reduced proportionately.

(Authority: 38 U.S.C. 3233(c); Pub. L. 99–576)

(e) *Cooperative training.* VA will make a charge against entitlement of 80 percent of a month for each month for which a veteran is paid educational assistance allowance at the cooperative training rate as provided in §21.5138(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3231(d); Pub. L. 100–689)

(f) *Training while the veteran is incarcerated.* If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in §21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in §21.5138 of this part for the appropriate type of training pursued.

(Authority: 38 U.S.C. 3231(e); Pub. L. 100–689)

(g) *Tutorial assistance.* If an individual is paid tutorial assistance as provided in §21.5141 of this part, the following provisions will apply.

(1) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual.

(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of $600 that is equal to

the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3234; Pub. L. 100–689)

(h) *Flight training courses.* (1) A charge against the period of entitlement for pursuit of a flight training course will be one month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(5)(viii). When this computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at under § 21.5138(a)(5)(viii) is $150 at the time educational assistance allowance is paid for a period of flight training, the individual will be charged one month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

(Authority: 38 U.S.C. 3231(f); Pub. L. 102–16)(Apr. 1, 1991)

(i) *Entitlement charge may be omitted for course discontinuance due to orders to, or changing, active duty in certain instances.* VA will make no charge against the entitlement of a servicemember or veteran for a payment of educational assistance when—

(1)(i) A veteran not serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War by orders dated before September 11, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, or former 10 U.S.C. 672(a), 672(d), 672(g), 673, or 673b (redesignated effective December 1, 1994, as 10 U.S.C. 12301(a), 12301(d), 12301(g), 12302, and 12304, respectively); or

(ii) A veteran not serving on active duty had to discontinue course pursuit as a result of being ordered, by orders dated after September 10, 2001, to serve on active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(iii) A servicemember serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War by orders dated before September 11, 2001, to a new duty location or assignment or to perform an increased amount of work; or

(iv) A servicemember serving on active duty had to discontinue course pursuit as a result of being ordered, by orders dated after September 10, 2001, to a new duty location or assignment or to perform an increased amount of work; and

(2) The veteran or servicemember failed to receive credit or lost training time toward completion of his or her educational, professional, or vocational objective as a result of having to discontinue course pursuit as described in paragraph (i)(1) of this section.

(Authority: 38 U.S.C. 3231(a)(5)(B)(i); sec. 2, Pub. L. 102–127, 105 Stat. 619–620; sec. 103, Pub. L. 107–103, 115 Stat. 979–980)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51745, Nov. 17, 1982; 48 FR 50530, Nov. 2, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34497, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 58 FR 31910, June 7, 1993; 58 FR 34369, June 25, 1993; 58 FR 34526, June 28, 1993; 73 FR 2426, Jan. 15, 2008]

### § 21.5076 Entitlement charge—overpayment cases.

(a) *Overpayment cases.* VA will make a charge against an individual's entitlement of an overpayment of educational assistance allowance only if:

(1) The overpayment is discharged in bankruptcy; or

(2) VA waives the overpayment and does not recover it; or

(3) The overpayment is compromised.

(Authority: 38 U.S.C. 3231)

(b) *Debt discharged in bankruptcy or is waived*. If the overpayment is discharged in bankruptcy or is waived and is not recovered, the entitlement charge will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(Authority: 38 U.S.C. 3231; Pub. L. 94–502)

(c) *Overpayment is compromised*. (1) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees.

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(2)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(2)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(2)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3231)

[45 FR 31, Jan. 2, 1980, as amended at 52 FR 45181, Nov. 25, 1987]

### §21.5078 Interruption to conserve entitlement.

(a) *Interruption to conserve entitlement generally prohibited*. No one may interrupt a certified period of enrollment for the purpose of conserving entitlement. A school may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the individual actually is enrolled and is pursuing his or her program of education for the entire term, quarter or semester.

(b) *Exceptions*. The Department of Veterans Affairs will charge entitlement for the entire period of enrollment certified if the individual otherwise is eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment actually is terminated.

(2) Enrollment is canceled and the individual has not negotiated an educational benefits check for any part of the certified period of enrollment.

(3) The individual:

(i) Interrupts his or her enrollment at the scheduled end of any term, quarter, semester or school year within the certified period of enrollment; and

(ii) Has not negotiated any check for educational benefits for the succeeding term, quarter, semester or school year.

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment and payments were continued under an established policy based upon an Executive order of the President or due to an emergency situation. This exception applies whether or not the individual has negotiated a check for educational benefits for the certified period.

(Authority: 38 U.S.C. 3241, 3680)

## COUNSELING

### §21.5100 Counseling.

(a) *Purpose*. The purpose of counseling is:

(1) To assist in selecting an objective:

(2) To develop a suitable program of education or training; and

(3) To resolve any personal problems which are likely to interfere with the successful pursuit of a program.

(b) *Availability of counseling.* Counseling assistance in available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans, and making sound decisions about the changes.

(Authority: 38 U.S.C. 3697A(a))

(c) *Optional counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon request of the individual. VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 3241, 3697A(a) and (b))

(d) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, VA must provide counseling as described in 38 U.S.C. 3697A prior to selection of a program of education or training. The counseling will follow the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. This requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program;

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. chapter 32 unless he or she—

(i) Reports for counseling;

(ii) Cooperates in the counseling process; and

(iii) Completes counseling to the extent required under paragraph (d)(1) of this section.

(Authority: 38 U.S.C. 3241, 3697A(c))

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51746, Nov. 17, 1982; 53 FR 34497, Sept. 7, 1988; 58 FR 31911, June 7, 1993; 61 FR 29030, June 7, 1996; 61 FR 36629, July 12, 1996]

### § 21.5103 Travel expenses.

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for a veteran who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).

(Authority: 38 U.S.C. 111(a), (d), (e), and (g))

(b) *Restriction.* VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the veteran.

(Authority: 38 U.S.C. 111)

[61 FR 29030, June 7, 1996]

## PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

### § 21.5130 Payments; educational assistance allowance.

VA will apply the following sections in administering benefits payable under 38 U.S.C. Chapter 32:

(a) Section 21.4131—Commencing dates (except paragraph (d)).

(b) Section 21.4135—Discontinuance dates.

(c) Section 21.4138 (except paragraph (b)—Certifications and release of payments.

(d) Section 21.4146—Assignments of benefits prohibited.

(Authority: 38 U.S.C. 3241(a))

(e) Section 21.4136(k) (except paragraph (k)(3))—Mitigating circumstances.

(Authority: 38 U.S.C. 3241(a), 3680(a))

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981; 53 FR 617, Jan. 11, 1988; 55 FR 31582, Aug. 3, 1990; 57 FR 38612, Aug. 26, 1992; 61 FR 29030, June 7, 1996; 63 FR 35836, July 1, 1998; 64 FR 23772, May 4, 1999; 65 FR 5786, Feb. 7, 2000]

### §21.5131 Educational assistance allowance.

(a) *General.* Statements in this section concerning payments of educational assistance allowance assume that the veteran or servicemember:

(1) Is eligible for educational assistance under 38 U.S.C. chapter 32;

(2) Has remaining entitlement; and

(3) Has not passed the 10-year delimiting date and any applicable extension to that date.

(Authority: 38 U.S.C. 3241)

(b) *Payment of educational assistance allowance for pursuit of programs of education and other courses.* (1) VA will pay educational assistance allowance at the rate specified in §21.5136 or §21.5138 while the veteran or servicemember is pursuing:

(i) An approved program of education;

(ii) A refresher or deficiency course; or

(iii) Special education or training which is necessary to enable the veteran or servicemember to pursue an approved program of education.

(2) Except as provided in paragraph (c) of this section, VA will not pay educational assistance allowance for pursuit of any course unless the course is:

(i) Part of the veteran's or servicemember's program of education;

(ii) A refresher or deficiency course; or

(iii) Special education or training which is necessary to enable the veteran or servicemember to pursue an approved program of education.

(3) VA may withhold a payment until it receives verification or certification of the veteran's or servicemember's continued enrollment and adjusts accordingly the veteran's or servicemember's account.

(Authority: 38 U.S.C. 3241)

(c) *Payment for taking a licensing or certification test.* VA will pay educational assistance allowance to an eligible veteran or servicemember who takes an approved licensing or certification test and applies, in accordance with the provisions of §21.1030(b), for that assistance. VA will not pay educational assistance for a licensing or certification test that neither a State approving agency nor VA has approved.

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

[72 FR 16978, Apr. 5, 2007]

### §21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.

(Authority: 38 U.S.C. 3241, 3688; Pub. L. 99–576, Pub. L. 100–689)

(b) *Contributions.* The amount of benefit payment to an individual also depends on:

(1) The amount the individual has contributed to the fund.

(2) The amount the Secretary of Defense has contributed to the fund for the individual.

(Authority: 38 U.S.C. 3231)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51746, Nov. 17, 1982; 48 FR 3369, Jan. 25, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34498, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 61 FR 29030, June 7, 1996]

### §21.5133 Certifications and release of payments.

A veteran or servicemember must be pursuing a program of education in order to receive payment of educational assistance allowance under 38 U.S.C. chapter 32. To ensure that this is the case, the provisions of this section must be met when a veteran or servicemember is seeking such payment.

(a) *General.* VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking reimbursement for taking an approved licensing or certification test; or one who qualifies for an advance payment) only after:

(1) The educational institution has certified his or her enrollment as provided in § 21.5200(d) of this part; and

(2) VA has received from the individual a verification of the enrollment. Generally, this verification will be required monthly, resulting in monthly payments.

(b) *Apprenticeship and other on-job training.* VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

(1) The training establishment has certified his or her enrollment in the training program as provided in § 21.5200(d); and

(2) VA has received from the veteran and the training establishment a certification of hours worked. Generally, this certification will be required monthly, resulting in monthly payments.

(c) *Correspondence training.* VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a combined correspondence-residence course only after—

(1) The educational institution has certified his or her enrollment;

(2) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(3) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution. Generally, this certification will be required quarterly, resulting in quarterly payments.

(38 U.S.C. 3680(g), 3689)

(Approved by the Office of Management and Budget under control number 2900–0465)

[57 FR 38612, Aug. 26, 1992, as amended at 72 FR 16978, Apr. 5, 2007]

### § 21.5134 Restrictions on paying benefits to servicepersons.

The Department of Veterans Affairs may not pay benefits to a serviceperson (other than one enrolled in a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate) unless he or she:

(a) Has completed 3 months of contributions to the fund or has made a lump-sum payment which is the equivalent of at least 3 months of contributions to the fund;

(b) Has agreed either to have a monthly deduction from his or her military pay, or has made a lump-sum contribution to the fund, or both, so that the 12 months participation requirement of § 21.5052(a) of this part will be met; and

(c) Is serving on active duty in an enlistment period subsequent to the initial period of active duty defined in § 21.5040(b)(3) of this part.

(Authority: 38 U.S.C. 3221, 3231, Pub. L. 94–502)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51746, Nov. 17, 1982; 54 FR 49977, Dec. 4, 1989]

### § 21.5135 Advance payments.

VA will apply the provisions of § 21.4138(a) in making advance payments to veterans and servicemembers.

(Authority: 38 U.S.C. 3241, 3680)

[64 FR 52652, Sept. 30, 1999]

### § 21.5136 Benefit payments—secondary school program.

(a) *Restrictions on payments.* (1) The Department of Veterans Affairs may authorize benefits to qualified enlisted servicepersons for a course, courses or program of education leading to a secondary school diploma or an equivalency certificate without charge to entitlement. Payments may be made only if:

(i) The individual has contributed to the fund for at least 1 month, and

(ii) The training is received while the individual is serving:

(A) The last 6 months of his or her first enlistment after December 31, 1976; or

(B) At any time after completing his or her first enlistment.

(2) An individual who is not on active duty must have been an enlisted serviceperson while he or she was on active duty in order to receive benefits while

enrolled in a course, courses or program of education leading to a secondary school diploma or an equivalency certificate.

(Authority: 38 U.S.C. 3231(b))

(b) *Monthly rate.* An individual pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate will receive one of two monthly rates.

(1) Unless the individual notifies the Department of Veterans Affairs to the contrary, the monthly rate of his or her educational assistance allowance will be based upon his or her tuition and fees. The Department of Veterans Affairs will make no charge against the entitlement of the individual who is receiving benefits at this monthly rate. The monthly rate will be the rate of tuition and fees being charged to the individual for the course, not to exceed:

(i) $376 for full-time training.

(ii) $283 for three-quarter time training.

(iii) $188 for half-time training.

(iv) $94 for quarter-time training.

(2) The individual may elect to receive educational assistance allowance at the monthly rate provided in §21.5138. The Department of Veterans Affairs will make an appropriate charge against the individual's entitlement if such an election is made.

(Authority: 38 U.S.C. 3241, 3491)

(c) *Method of payment.* (1) If the individual's educational assistance allowance is based upon the rate as determined in paragraph (b)(1) of this section, payment shall be made in a lump sum for the term, quarter or semester at the beginning of the month in which training begins.

(2) If the individual elects to have his or her educational assistance allowance computed as provided in §21.5138, payment will be made in the same manner as for any other residence training.

(Authority: 38 U.S.C. 3241)

[47 FR 51746, Nov. 17, 1982, as amended at 50 FR 19933, May 13, 1985]

**§21.5137 Benefit payments and charges against entitlement for taking an approved licensing or certification test.**

(a) *Benefit payments.* The amount of educational assistance allowance VA will pay to a veteran or servicemember for taking an approved licensing or certification test, if the veteran or servicemember is entitled to receive such benefit payments, will be the lowest of the following:

(1) The fee the organization or entity offering the test charges for taking the test;

(2) $2,000; or

(3) The total remaining amount of the veteran's or servicemember's contributions to the fund and the contributions the Secretary of Defense has made to the fund on behalf of the veteran or servicemember.

(Authority: 38 U.S.C. 3222, 3231, 3232(c), 3452(b), 3689)

(b) *Charge against entitlement.* For educational assistance allowance paid for taking an approved licensing or certification test, VA will make a charge against the veteran's or servicemember's entitlement by dividing the amount paid under paragraph (a) of this section by the monthly amount as calculated under §21.5138(c). The calculation will assume that the veteran or servicemember is a full-time student.

(Authority: 38 U.S.C. 3232(c), 3452(b), 3689)

[72 FR 16978, Apr. 5, 2007]

**§21.5138 Computation of benefit payments and monthly rates.**

Except as provided in §§21.5136(b)(1) and 21.5137(a), for purposes of this subpart VA will compute benefit payments and monthly rates as provided in this section.

(Authority: 38 U.S.C. 3231, 3233, 3241, 3491, 3680, 3689)

(a) *Computation of entitlement factor.* (1) For residence training, VA will compute an entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period. (1) _____

(ii) Enter the number of full days in excess of the number of full months. (a)

(iii) Divide line a by 30. Enter the quotient. (2) _____

(iv) Total (lines 1 and 2) ..... (3) _____

(v) Multiply line 3 by 1 for a full-time student; by .75 for a three-quarter time student; by .5 for a half-time student; or by .25 for a one-quarter time student. Enter the result. (4) _____

(This is the entitlement factor.)

(2) For correspondence training, VA will compute an entitlement factor as follows:

(i) Enter the amount of the individual's contributions remaining in the fund. (b)

(ii) Enter the individual's remaining months of entitlement. (c)

(iii) Divide line b by line c. Enter the quotient. (5) _____

(iv) Enter two times the amount in line 5 (6) _____

(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (d)

(vi) Enter the individual's remaining months of entitlement. (e)

(vii) Divide line d by line e. Enter the quotient. (7) _____

(viii) Total (lines 5, 6 and 7) ..... (8) _____

(ix) Enter the correspondence charges certified by the school. (9) _____

(x) Divide line 9 by line 8. Enter the quotient. (10) _____

(This is the entitlement factor.)

(3) For apprenticeship and other on-job training, VA will compute an entitlement factor as follows:

(i) Enter the number of full days in the applicable benefit period. (Enter 30 if the benefit period is a full month.). (1) _____

(ii) Divide line 1 by 30. Enter the quotient:. (2) _____

(iii) Multiply line 2 by .75 if the veteran is in the first six months of training; by .55 if the veteran is in the second six months of training; by .35 if the veteran is in a subsequent month of training; and by a pro-rated fraction if one of the veteran's first two six-month periods of training ends during the benefit period. Enter the result. (3) _____

(This is the entitlement factor.)

(Authority: 38 U.S.C. 3231, 3233; Pub. L. 96–466, Pub. L. 97–306, Pub. L. 99–576)

(4) For cooperative training, VA will compute an entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period. (1) _____

(ii) Enter the number of full days in excess of the number of full months. (a) _____

(iii) Divide line a by 30. Enter the quotient. (2) _____

(iv) Total lines 1 and 2 ..... (3) _____

(v) Multiply line 3 by .80. Enter the result. (4) _____

(This is the entitlement factor.)

(Authority: 38 U.S.C. 3231; Pub. L. 100–689)

(5) For flight training, VA will compute an entitlement factor as follows:

(i) Enter the amount of the individual's contributions remaining in the fund. (a) _____

(ii) Enter the individual's remaining months of entitlement. (b) ____

(iii) Divide line a by line b. Enter the quotient. (1) ____

(iv) Enter two times the amount in line 1. (2) ____

(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (c) ____

(vi) Enter the individual's remaining months of entitlement. (d) ____

(vii) Divide line c by line d. Enter the quotient. (3) ____

(viii) Total (lines 1, 2 and 3) ..... (4) ____

(ix) Enter the charges for flight training certified by the school. (e) ____

(x) Multiply line e by .60 ..... (5) ____

(xi) Divide line 5 by line 4. Enter the quotient. (This is the entitlement factor.) (6) ____

(Authority: 38 U.S.C. 3231(f))

(b) *Computation of benefit payment.* Under this section, VA will compute benefit payments as follows:

(1) Enter the entitlement factor. (f)

(2) Enter the amount of the individual's contributions remaining in the fund. (g)

(3) Multiply line f by line g. Enter the result. (h)

(4) Enter the remaining months of the individual's entitlement. (i)

(5) Divide line h by line i. Enter the quotient. (11) _____

(This is the individual's portion.)

(6) Enter two times the amount in line 11. (12) _____

(This is the Department of Veterans Affairs's portion of benefit payments for training completed before January 1, 1982. The Secretary of Defense will contribute this portion of the benefit payment for training that occurs after December 31, 1981.)

(7) Enter the amount of the additional contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual. (j)

(8) Multiply line f by line j. Enter the result. (k)

(9) Enter the individual's remaining months of entitlement. (l)

(10) Divide line k by line 1. Enter the quotient. (13) _____

(This is the Department of Defense's portion for training completed before January 1, 1982. For training completed after December 31, 1981, this is the second part of the Department of Defense's portion.) (38 U.S.C. 3231)

(11) Total (add lines 11, 12 and 13) .. (14) _____

(12) If the veteran is in an apprenticeship or other on-job training and fails to complete 120 hours of training in a month, reduce the amount on line 14 proportionately. In this computation round the number of hours worked to the nearest multiple of eight. Enter the result. (15) _____

(13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result. (16) _____

(Authority: 38 U.S.C. 3233 (1989), 38 U.S.C. 3680(a)(2) (1974); Pub. L. 101–237)

(14) The benefit payment is either—

(i) The amount shown on line 14 unless the veteran is in apprenticeship or other on-job training and has failed to complete 120 hours of training in a month during the benefit period in which case the benefit payment is the amount shown on line 15, or the veteran is pursuing certain courses which do not lead to a standard college degree in which case the benefit payment is the amount shown on line 16, or

(ii) The total amount of the remaining contributions in the fund made by the individual and the VA and the Secretary of Defense on behalf of the individual, whichever is less.

(Authority: 38 U.S.C. 3233; Pub. L. 99–576)

(Authority: 38 U.S.C. 3231; Pub. L. 94–502)

(c) *Monthly rates.* Under this section, VA will compute the monthly rates of payment for individuals in residence training by repeating the calculations in paragraphs (b)(1) through (11) of this section except that instead of entering the entitlement factor on line f, paragraph (b)(1), VA will enter 1 for a full-time student, .75 for a three-quarter time student, .5 for a half-time student, or .25 for a one-quarter time student.

(Authority: 38 U.S.C. 3231)

[45 FR 31, Jan. 2, 1980, as amended at 46 FR 32024, June 19, 1981; 47 FR 51747, Nov. 17, 1982; 48 FR 3369, Jan. 25, 1983; 48 FR 50530, Nov. 2, 1983; 52 FR 3429, Feb. 4, 1987; 53 FR 34498, Sept. 7, 1988; 55 FR 31582, Aug. 3, 1990; 57 FR 38615, Aug. 26, 1992; 58 FR 31911, June 7, 1993; 72 FR 16978, Apr. 5, 2007]

### §21.5139 Computation of benefit payments for incarcerated individuals.

Notwithstanding the provisions of §21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.

(a) *No educational assistance allowance payable to some incarcerated individuals.* VA will pay no educational assistance allowance to an individual who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and

(3) Has incurred no expenses for supplies, books or equipment.

(Authority: 38 U.S.C. 3231(e))

(b) *Reduced educational assistance allowance for some incarcerated individuals.* (1) VA will pay a reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution of conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the individual pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:

(i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or

(ii) The monthly rate for the individual as determined by § 21.5138(c) of this part.

(Authority: 38 U.S.C. 3231(e))

[55 FR 31583, Aug. 3, 1990]

### § 21.5141 Tutorial assistance.

An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans' Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3234, 3492)

[61 FR 29030, June 7, 1996]

STATE APPROVING AGENCIES

### § 21.5150 State approving agencies.

In administering chapter 32, title 38, United States Code, VA will apply the provisions of the following sections:

(a) Section 21.4150 (except par. (e))—Designation;

(b) Section 21.4151—Cooperation;

(c) Section 21.4152—Control by agencies of the United States;

(d) Section 21.4153—Reimbursement of expenses;

(e) Section 21.4154—Report of activities;

(f) Section 21.4155—Evaluations of State approving agency performance.

(Authority: 38 U.S.C. 3241, 3670–3674, 3674A; Pub. L. 94–502, Pub. L. 100–323)

[55 FR 12483, Apr. 4, 1990, as amended at 61 FR 1526, Jan. 22, 1996]

SCHOOLS

### § 21.5200 Schools.

In the administration of benefits payable under the provisions of chapter 32, title 38, U.S.C., the Department of Veterans Affairs will apply the following sections:

(a) Section 21.4200—Definitions (with the exception of paragraph (a)).

(Authority: 38 U.S.C. 3241; Pub. L. 94–502, Pub. L. 99–576)

(b) Section 21.4201—Restrictions on enrollment; percentage of students receiving financial support.

(Authority: 38 U.S.C. 3241, 3473(d))

(c) Section 21.4202—Overcharges; restrictions on enrollments.

(Authority: 38 U.S.C. 3241, 3690)

(d) Section 21.4203—Reports—Requirements.

(Authority: 38 U.S.C. 3241, 3684; Pub. L. 94–502, Pub. L. 99–576)

(e) Section 21.4204 (except paragraphs (a) and (e))-Periodic certifications.

(Authority: 38 U.S.C. 3241, 3684)

(f) [Reserved]

(g) Section 21.4206—Reporting fee.

(h) Section 21.4209—Examination of records.

(Authority: 38 U.S.C. 3241, 3690; Pub. L. 94–502, Pub. L. 99–576)

(i) Section 21.4210—Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.

(j) Section 21.4211—Composition, jurisdiction, and duties of Committee on Educational Allowances.

(k) Section 21.4212—Referral to Committee on Educational Allowances.

(l) Section 21.4213—Notice of hearing by Committee on Educational Allowances.

(m) Section 21.4214—Hearing rules and procedures for Committee on Educational Allowances.

(n) Section 21.4215—Decision of Director of VA facility of jurisdiction.

(o) Section 21.4216—Review of decision of Director of VA facility of jurisdiction.

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

[45 FR 31, Jan. 2, 1980, as amended at 53 FR 34499, Sept. 7, 1988; 57 FR 38613, Aug. 26, 1992; 61 FR 1526, Jan. 22, 1996; 61 FR 29030, June 7, 1996; 63 FR 35836, July 1, 1998; 72 FR 16978, Apr. 5, 2007]

PROGRAMS OF EDUCATION

### § 21.5230 Programs of education.

(a) *Approving the selected program of education.* Except as provided in paragraphs (b) and (c) of this section, VA will approve a program of education for a veteran or servicemember under 38 U.S.C. chapter 32, only if—

(1) The program meets the definition of a program of education stated in § 21.5021(q);

(2) Except for a program consisting of a licensing or certification test, the program has an objective as described in § 21.5021(r) or (s);

(3) Any courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the veteran or servicemember maintain employment in a vocation or profession, the veteran or servicemember is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3202(2), 3689(b))

(b) *Programs which include secondary school training.* VA may approve the enrollment of a veteran or servicemember in a refresher, remedial, deficiency or other preparatory or special educational assistance course when the veteran or eligible servicemember needs the course in order to pursue an approved program of education.

(Authority: 38 U.S.C. 3241(a)(2))

(c) *Refresher training for those already qualified.* The refresher training referred to in paragraph (b) of this section includes training in a course or courses for which the veteran is already qualified provided the course or courses permit the veteran to update knowledge and skills or to be instructed in the technological advances which have occurred in the veteran's field of employment. The relevant field of employment may have been pursued either before, during or after the veteran's active duty.

(Authority: 38 U.S.C. 3241(a)(2); Pub. L. 100–689)

[55 FR 31583, Aug. 3, 1990, as amended at 72 FR 16978, Apr. 5, 2007]

### § 21.5231 Combination.

In the administration of benefits payable under chapter 32, title 38, U.S.C., the Department of Veterans Affairs will apply § 21.4233(b), (c), and (e).

(Authority: 38 U.S.C. 3241)

[45 FR 31, Jan. 2, 1980, as amended at 61 FR 7218, Feb. 27, 1996]

### § 21.5232 Change of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.

(Authority: 38 U.S.C. 3241, 3691; Pub. L. 94-502, Pub. L. 101–366) (June 1, 1991)

[58 FR 46866, Sept. 3, 1993]

COURSES

### § 21.5250 Courses.

(a) In administering benefits payable under 38 U.S.C. chapter 32, VA and, where appropriate, the State approving agencies shall apply the following sections.

(1) Section 21.4250 (except paragraph (c)(1))—Course and licensing and certification test approval; jurisdiction and notices.

(2) Section 21.4251—Minimum period of operation requirement for educational institutions.

(3) Section 21.4252—Courses precluded; erroneous, deceptive, or misleading practices.

(4) Section 21.4253—Accredited courses.

(5) Section 21.4254—Nonaccredited courses.

(6) Section 21.4255—Refund policy; nonaccredited courses.

(7) Section 21.4256—Correspondence programs and courses.

(8) Section 21.4257—Cooperative courses.

(9) Section 21.4258—Notice of approval.

(10) Section 21.4259—Suspension or disapproval.

(11) Section 21.4260—Courses in foreign countries.

(12) Section 21.4261—Apprentice courses.

(13) Section 21.4262—Other training on-the-job courses.

(14) Section 21.4265—Practical training approved as institutional training or on-job training.

(15) Section 21.4266—Courses offered at subsidiary branches or extensions.

(16) Section 21.4267—Approval of independent study.

(17) Section 21.4268—Approval of licensing and certification tests.

(Authority: 38 U.S.C. 3241, 3473, 3476, 3672, 3675, 3676, 3678, 3679, 3686, 3689)

(b) *Flight courses.* In administering benefits payable for flight training under chapter 32, title 38, U.S.C., VA and the State approving agencies will apply the provisions of § 21.4263 of this part. Educational assistance allowance is payable only for flight training undertaken by a veteran or serviceperson after March 31, 1991.

(Authority: 38 U.S.C. 3241; Pub. L. 102–16)(Apr. 1, 1991)

[58 FR 31911, June 7, 1993, as amended at 61 FR 1526, Jan. 22, 1996; 61 FR 7218, Feb. 27, 1996; 72 FR 16979, Apr. 5, 2007]

ASSESSMENT AND PURSUIT OF COURSE

### § 21.5270 Assessment and pursuit of course.

In the administration of benefits payable under 38 U.S.C. chapter 32, VA shall apply the following sections.

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with farm cooperative training)—Measurement of courses. For the purpose of benefits payable under 38 U.S.C. chapter 32 that training identified in § 21.4270 as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(Authority: 38 U.S.C. 3241, 3688; Pub. L. 94–502, Pub. L. 99–576, Pub. L. 100–689)

(b) [Reserved]

(c) Section 21.4272—Collegiate course measurement.

(Authority: 38 U.S.C. 3241, 3688)

(d) Section 21.4273—Collegiate graduate.

(e) Section 21.4274—Law courses.

(f) Section 21.4275—Practical training courses; measurement.

(Authority: 38 U.S.C. 3241, 3688)

(g) Section 21.4277—Discontinuance; unsatisfactory progress, conduct, and attendance.

(h) Section 21.4278—Reentrance after discontinuance.

(Authority: 38 U.S.C. 3241, 3474)

(i) Section 21.4279—Combination correspondence-residence program.

(Authority: 38 U.S.C. 3241, 3688)

(j) [Reserved]

(Authority: 38 U.S.C. 3241, 3473)

[45 FR 31, Jan. 2, 1980, as amended at 53 FR 34499, Sept. 7, 1988; 55 FR 31584, Aug. 3, 1990; 61 FR 7218, Feb. 27, 1996; 62 FR 55760, Oct. 28, 1997]

EDUCATIONAL ASSISTANCE PILOT PROGRAM

### § 21.5290 Educational Assistance Pilot Program.

(a) *Purpose.* The Educational Assistance Pilot Program is designed to encourage enlistments and reenlistments

in the Army, Navy, Air Force and Marine Corps.

(Authority: Sec. 903, Pub. L. 96–342; 94 Stat. 1115)

(b) *Outline of program.* This program allows some individuals:

(1) To participate while making contributions at a rate less than that prescribed in § 21.5052(b), and/or

(2) To transfer entitlement allowed in § 21.5071 to a spouse or child.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

[47 FR 51747, Nov. 17, 1982]

**§ 21.5292 Reduced monthly contribution for certain individuals.**

(a) *Qualifying for reduced monthly contributions.* Some individuals can become participants while making no contributions. To qualify for this portion of the pilot program the individual must:

(1) Enlist or reenlist in the Army, Navy, Air Force or Marine Corps after November 30, 1980, and before October 1, 1981;

(2) Elect or have elected to participate in the Post-Vietnam Era Educational Assistance Program; and

(3) Be chosen for the pilot program by the Secretary of Defense or his or her designee.

(Authority: Sec. 903 Pub. L. 96–342, 94 Stat. 1115)

(b) *Monthly contributions made by the Secretary of Defense.* (1) The Secretary of Defense may pay $75 per month as the monthly contribution otherwise required under § 21.5052(b) for an individual described in paragraph (a) of this section.

(2) The individual will not be required to make a contribution for any month to the extent that the contribution otherwise required by § 21.5052(b) for that month is paid by the Secretary of Defense.

(3) The amount paid by the Secretary of Defense shall be deposited in the fund.

(Authority: Sec. 903, Pub. L. 96–342; 94 Stat. 1115)

(c) *Restrictions on monthly contributions.* The Secretary of Defense may not make a payment under the pilot program on behalf of any person for any month:

(1) Before the month in which the person enlisted or reenlisted in the Army, Navy, Air Force or Marine Corps, or

(2) Before December 1980.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

(d) *Refunds.* If an individual participating in the pilot program disenrolls, any monthly contributions made by the Secretary of Defense will be returned to the Secretary of Defense rather than refunded to the individual.

(Authority: Sec. 903, Pub. L. 96–342; 94 Stat. 1115)

(e) *Application of sections to this portion of the pilot program.* (1) The following sections apply to this portion of the pilot program with amendments as noted:

(i) In § 21.5021(e) a participant includes someone whose contributions are being made by the Secretary of Defense.

(ii) In § 21.5052(b) the Secretary of Defense may make contributions to the fund and may designate the amount of the contribution.

(iii) In § 21.5052(d) the Secretary of Defense may increase or decrease the amount of the contribution.

(iv) In §§ 21.5064 and 21.5065 monthly contributions made by the Secretary of Defense will be returned to him or her instead of being refunded to the veteran.

(v) In § 21.5071 the Department of Veterans Affairs will also credit the individual with 1 month of entitlement for each month the Secretary of Defense contributes to the fund on his or her behalf.

(vi) In § 21.5138 the references to the individual's contributions include those contributions made on the individual's behalf by the Secretary of Defense.

(2) Except as amended in paragraph (e)(1) of this section §§ 21.5001 through 21.5041 and §§ 21.5050 through 21.5270

apply without change to this portion of the pilot program. See § 21.5296.

(Authority: Pub. L., 96–342, sec. 903; 38 U.S.C. 3232, 3698(a)(2); Pub. L. 97–35, Pub. L. 99–576)

[47 FR 51747, Nov. 17, 1982, as amended at 49 FR 2109, Jan. 18, 1984; 53 FR 34499, Sept. 7, 1988; 61 FR 29030, June 7, 1996]

**§ 21.5294 Transfer of entitlement.**

(a) *Qualifying for a transfer of entitlement.* Some participants may transfer their entitlement to their spouse or child. To qualify for this portion of the pilot program the individual must:

(1) After June 30, 1981 and before October 1, 1981, reenlist in the Army;

(2) Be a participant;

(3) Possess a critical military specialty as determined by the Secretary of Defense; and

(4) Be chosen for his portion of the pilot program by the Secretary of Defense or his or her designee.

(Authority: Sec. 903, Pub. L. 96–342; 94 Stat. 1115)

(b) *Persons who may receive transferred entitlement.* An individual meeting the requirements of paragraph (a) of this section may transfer entitlement earned under § 21.5071 for the purpose of allowing another person to receive educational assistance allowance. Entitlement may be transferred only:

(1) To a spouse or child of the participant,

(2) To one person at a time,

(3) If the participant is not receiving educational assistance allowance, and

(4) When the participant states in writing to the Department of Veterans Affairs that the entitlement should be transferred.

(Authority: Sec. 903(c), Pub. L. 96–342, 94 Stat. 1115)

(c) *Educational assistance allowance.* (1) The individual must specify in writing to the Department of Veterans Affairs the period of time he or she wishes the spouse or child to receive educational assistance allowance on the basis of the transfer of entitlement. The Department of Veterans Affairs will not pay educational assistance allowance to a spouse or child for training completed either before or after the period specified by the participant.

(2) The commencing date of an award of educational assistance allowance to a spouse or child will be the earlier of the following dates:

(i) The date of the spouse's or child's entrance or reentrance under § 21.4131;

(ii) The first day of the period authorized by the participant for the transfer of entitlement.

(3) The ending date of an award of educational assistance allowance to a spouse or child will be the earliest of the following dates:

(i) The ending date of the spouse's or child's course or period of enrollment as certified by the school or training establishment;

(Authority: 38 U.S.C. 3233; Pub. L. 99–576)

(ii) The ending date of the participant's eligibility as determined under § 21.5041;

(iii) The ending date specified in § 21.4135;

(iv) The date of the death of the participant on whom the spouse's or child's entitlement is based;

(v) The last day of the period authorized by the participant for the transfer of entitlement.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

(d) *Application of VA regulations to this portion of the pilot program.* (1) Sections 21.5030 (a) and (b), 21.5040, 21.5041 and 21.5050 through 21.5067 and § 21.5145 apply to the individual who is participating in this portion of the pilot program, but they do not apply to the individual's spouse or child, per se.

(Authority: Pub. L. 96–342, sec. 903; Pub. L. 99–576)

(2) The following sections apply to this portion of the pilot program with amendments as noted:

(i) In § 21.5022 the entitlement used by the spouse or child counts toward the 48-month limitation on receiving benefits under more than one program which is imposed on the individual.

(ii) In § 21.5072 the charge against the individual's entitlement will be made on the basis of payments made to the individual's spouse or child.

(iii) In § 21.5100 the individual's spouse or child may request counseling, but an incompetent spouse or

child is not required to be counseled before selecting a program of education.

(Authority: Pub. L. 96–342, sec. 903, Pub. L. 97–306, Pub. L. 99–576)

(iv) In §§21.5132 through 21.5138 references to payment to the individual apply equally to payment to the spouse or child.

(Authority: Sec. 903, Pub. L. 96–342; Pub. L. 97–306, 96 Stat. 1429)

(3) Except as amended in paragraph (d)(2) of this section the following sections apply without change to this portion of the pilot program:

(i) Sections 21.5001 through 21.5023,

(ii) Section 21.5030(c),

(iii) Sections 21.5070 through 21.5130,

(iv) Section 21.5131, and

(v) Sections 21.5132 through 21.5300.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

(4) Section 21.5131 (a) and (b) does not apply to this portion of the pilot program.

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

[47 FR 51748, Nov. 17, 1982; 48 FR 50530, Nov. 2, 1983; 49 FR 2110, Jan. 18, 1984; 53 FR 34499, Sept. 7, 1988; 72 FR 16979, Apr. 5, 2007]

### §21.5296 Extended period of eligibility.

(a) *General.* A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by §21.5041 provided—

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or metal disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 3232; Pub. L. 99–576, Pub. L. 100–689)

(b) *Application.* (1) Only the veteran may apply for an extended period of eligibility pursuant to this section. A spouse or child to whom entitlement may be or has been transferred may not apply for, nor receive, an extension based upon disability of either the veteran or the spouse or child.

(2) The veteran must apply for the extended period of eligibility in time for VA to receive the application by the later of the following dates:

(i) One year from the last date of the delimiting period otherwise applicable to the veteran under §21.5041, or

(ii) One year from the termination date of the period of the veteran's mental or physical disability.

(3) No application for an extended period of eligibility should be submitted and none will be processed during any period when the veteran has transferred entitlement to a spouse or child, since eligibility cannot be fully determined as provided in paragraph (c)(4)(ii) of this section.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(c) *Qualifying period of disability.* A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(Authority: 38 U.S.C. 105, 3232; Pub. L. 99–576, Pub. L. 100–689)

(1) Evidence must be presented which clearly establishes that the veteran's disability made pursuant of his or her program medically infeasible during the veteran's original period of eligibility as determined by §21.5041. A period of disability following the end of the original disability period will not be a basis for extension.

(2) VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(3) Except as provided in paragraph (c)(4) of this section, a veteran's transfer of entitlement to a spouse or child

during a period for which the veteran's disability prevented his or her pursuit of a program of education will not affect the veteran's entitlement to an extension of eligibility under this section.

(4) Since the act of entitlement transfer to a spouse or child indicates that the veteran did not intend to personally use his or her educational assistance during the specified transfer period, a veteran who becomes disabled after transferring entitlement will not be entitled to an extended period of eligibility based on any period of the disability which coincides with the specified transfer period unless—

(i) The transferee or transferees did not use any entitlement during this period, and

(ii) The veteran can clearly demonstrate that, notwithstanding his or her decision to transfer entitlement, the veteran would have used the entitlement during all or part of the transfer period and was prevented from doing so solely by reason of his or her disability.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(d) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.5041 of this part, and

(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(e) *Determining the length of extended periods of eligibility.* A veteran's extended period of eligibility shall be based on the qualifying period of disability, and determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.5041 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.5041 of this part.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(f) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

(g) *No transfer of entitlement for use during the extended period of eligibility.* (1) The veteran may only transfer entitlement to a spouse or child for use during the original period of eligibility as determined by § 21.5041 of this part.

(2) If the veteran has established an extended period of eligibility with VA, only the veteran may use remaining entitlement during that period.

(3) If the veteran transfers his or her entitlement after having received an extension of eligibility, but before the last day of the delimiting period as determined by § 21.5041 of this part, the

eligibility of the spouse or child to use entitlement ends on the veteran's otherwise applicable delimiting date as determined by §21.5041 of this part.

(Authority: 38 U.S.C. 3232; Pub. L. 99–576)

[53 FR 34499, Sept. 7, 1988, as amended at 55 FR 31584, Aug. 3, 1990]

## Subpart H—Educational Assistance Test Program

AUTHORITY: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

SOURCE: 51 FR 27026, July 29, 1986, unless otherwise noted.

### §21.5701 Establishment of educational assistance test program.

(a) *Establishment*. The Departments of Army, Navy and Air Force have established an educational assistance test program.

(Authority: 10 U.S.C. 2141(a))

(b) *Purpose*. The purpose of this program is to encourage enlistments and reenlistments for service on active duty in the Armed Forces of the United States during the period from October 1, 1980, through September 30, 1981.

(Authority: 10 U.S.C. 2141(a))

(c) *Funding*. The Department of Defense is bearing the costs of this program. Participants in the program do not bear any of the costs.

(Authority: 10 U.S.C. 2141(a))

### §21.5703 Overview.

This program provides subsistence allowance and educational assistance to selected veterans and servicemembers and, in some cases, to dependents of these veterans and servicemembers.

(Authority: 10 U.S.C. 2141(b))

### §21.5705 Transfer of authority.

The Secretary of Defense delegates the authority to administer the benefit payment portion of this program to the Secretary of Veterans Affairs and his or her designees. See §21.5901.

(Authority: 10 U.S.C. 2141(b))

GENERAL

### §21.5720 Definitions.

For the purpose of regulations in the §§21.5700, 21.5800 and 21.5900 series and payment of benefits under the educational assistance and subsistence allowance program, the following definitions apply:

(a) *Veteran*. This term means a person who—

(1) Is not on active duty.

(2) Served as a member of the Air Force, Army, Navy or Marine Corps.

(3) Enlisted or reenlisted after November 30, 1980, and before October 1, 1981, specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149; Pub. L. 96–342; and

(4) Meets the eligibility requirements for the program as stated in §21.5740.

(Authority: 10 U.S.C. 2141(a))

(b) *Accredited institution*. This term means a civilian college or university or a trade, technical or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that—

(1) Provides education on a postsecondary level (including accredited programs conducted at overseas locations) and

(2) Is accredited by—

(i) A nationally recognized accrediting agency or association, or

(ii) An accrediting agency or association recognized by the Secretary of Education.

(Authority: 10 U.S.C. 2143(c))

(c) *Dependent child*. This means an unmarried legitimate child (including an adopted child or a stepchild) who either—

(1) Has not passed his or her 21st birthday; or

(2) Is incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and is, or was at the time of the veteran's or servicemember's death, in fact, dependent on him or her for over one-half of his or her support; or

(3) Has not passed his or her 23rd birthday; is enrolled in a full-time course of study in an institution of

higher learning aproved by the Secretary of Defense or the Secretary of Education, as the case may be; and is, or was at the time of the veteran's or servicemember's death, in fact, dependent upon him or her for over one half of his or her support.

(Authority: 10 U.S.C. 1072(2)(D), 2147(d)(1))

(d) *Surviving spouse*. The term means a widow or widower who is not remarried.

(Authority: 10 U.S.C. 2147(d)(2))

(e) *Servicemember*. This term means anyone who—

(1) Meets the eligibility requirements for the program, and

(2) Is on active duty in the Air Force, Army, Navy or Marine Corps.

(Authority: 10 U.S.C. 2142)

(f) *Spouse*. This term means a person of the opposite sex who is the husband or wife of the veteran or servicemember.

(Authority: 10 U.S.C. 2147)

(g) *Divisions of the school year*. (1) *Standard academic year* is a period of 2 standard semesters or 3 standard quarters. It is 9 months long.

(2) *Standard quarter* is a division of the standard academic year. It is from 10 to 13 weeks long.

(3) *Standard semester* is a division of the standard academic year. It is 15 to 19 weeks long.

(4) *Term* is either

(i) Any regularly established division of the standard academic year, or

(ii) The period of instruction which takes place between standard academic years.

(Authority: 10 U.S.C. 2142)

(h) *Full-time training*. This term means training at the rate of 12 or more semester hours per semester, or the equivalent.

(Authority: 10 U.S.C. 2144)

(i) *Part-time training*. The term means training at the rate of less than 12 semester hours per semester or the equivalent.

(Authority: 10 U.S.C. 2144)

(j) *Enrollment period*. This term means an interval of time during which an eligible individual—

(1) Is enrolled in an accredited educational institution; and

(2) Is pursuing his or her program of education.

(Authority: 10 U.S.C. 2142)

### § 21.5725 Obtaining benefits.

(a) *Actions required of the individual*. In order to obtain benefits under the educational assistance and subsistence allowance program, an individual must—

(1) File a claim for benefits with VA, and

(2) Ensure that the accredited institution certifies his or her enrollment to VA.

(Authority: 10 U.S.C. 2149)

(b) *VA action upon receipt of a claim*. Upon receipt of a claim from an individual VA shall—

(1) Determine if the individual, or the veteran upon whose service the claim is based, has or had basic eligibility;

(2) Determine that the eligibility period has not expired;

(3) Determine that the individual has remaining entitlement;

(4) Verify that the individual is attending an accredited institution;

(5) Determine whether payments may be made for the course, and

(6) Make appropriate payments of educational assistance and subsistence allowance.

(Authority: 10 U.S.C. 2142–2149)

## CLAIMS AND APPLICATIONS

### § 21.5730 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under the educational program described in § 21.5701,

VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 2141, 2149; 38 U.S.C. 5101, 5102, 5103)

[64 FR 23772, May 4, 1999]

ELIGIBILITY AND ENTITLEMENT

**§21.5740 Eligibility.**

(a) *Establishing eligibility*. To establish eligibility to educational assistance under 10 U.S.C. Chapter 107 an individual must—

(1) Enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force or Marine Corps after September 30, 1980 and before October 1, 1981 specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149, Pub. L. 96–342,

(2) Have graduated from a secondary school,

(3) Meet other requirements as the Secretary of Defense may consider appropriate for the purpose of this chapter and the needs of the Armed Forces,

(4) Meet the service requirements stated in paragraph (b) of this section, and

(5) If a veteran, have been discharged under honorable conditions.

(Authority: 10 U.S.C. 2142(b), 38 U.S.C. 5303A)

(b) *Service Requirements*. (1) The individual must complete 24 continuous months of active duty of the enlistment or reenlistment described in paragraph (a)(1) of this section; or

(2) If the enlistment described in paragraph (a) of this section is the individual's initial enlistment for service on active duty, the individual must—

(i) Complete 24 continuous months of active duty, or

(ii) Be discharged or released from active duty—

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or

(iii) Be found by the VA to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in §3.4(b) of this title. Once the VA makes this finding, the individual's eligibility will continue notwithstanding that the disability becomes noncompensable.

(3) In computing time served for the purpose of this paragraph, VA will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this title. However, those periods will not interrupt the individual's continuity of service.

(Authority: 10 U.S.C. 2142; 38 U.S.C. 5303A)

[45 FR 31, Jan. 2, 1980, as amended at 54 FR 34984, Aug. 23, 1989]

**§21.5741 Eligibility under more than one program.**

(a) *Veterans and servicemembers*. A veteran or servicemember who is eligible for educational assistance under either 38 U.S.C. chapter 31 or 34, or subsistence allowance under 38 U.S.C. chapter 31 may also be eligible for the Educational Assistance Test Program. (See §21.5824 for restrictions on duplication of benefits.)

(b) *Spouse, surviving spouse or dependent child*. A spouse, surviving spouse or dependent child who is eligible to receive educational assistance under 38 U.S.C. Chapters 31, 32, 34 and 35 may also be eligible for the Educational Assistance Test Program. (See §21.5824 for restrictions on duplication of benefits.)

(Authority: 10 U.S.C. 2142)

(c) *Limitation on benefits*. (1) Before March 2, 1984 the 48 month limitation on benefits under two or more programs found in 38 U.S.C. 3695 does not apply to the Educational Assistance Test Program when taken in combination with any program authorized under title 38 U.S.C.

(2) After March 1, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and the provisions of any of the laws listed below may not exceed 48 months (or the part-time equivalent thereof):

(i) Part VII or VIII, Veterans Regulations numbered 1(a) as amended,

(ii) Title II of the Veterans' Readjustment Assistance Act of 1952,

(iii) The War Orphans' Educational Assistance Act of 1956,

(iv) Chapters 32, 34, 35 and 36 of title 38 U.S.C. and the former chapter 33,

(v) Section 903 of the Department of Defense Authorization Act, 1981.

(Authority: Pub. L. 96–342, 10 U.S.C. 2141 note)

(vi) The Hostage Relief Act of 1980.

(3) After October 19, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and any of the laws listed in paragraph (c)(2) of this section, may not exceed 48 months (or the part-time equivalent thereof):

(i) Chapter 30 of title 38, U.S.C., and

(ii) Chapter 1606 of title 10, U.S.C.

(Authority: 38 U.S.C. 3695)

[51 FR 27026, July 29, 1986, as amended at 61 FR 20729, May 8, 1996]

### § 21.5742 Entitlement.

(a) *Educational assistance.* A veteran or servicemember shall be entitled to one standard academic year (or the equivalent) of educational assistance for each year of service following the first enlistment beginning after November 30, 1980 (up to a maximum of four years). If the veteran or servicemember completes two years of active duty in the term of enlistment, but fails to complete the enlistment or fails to complete four years of active duty in an enlistment of more than four years, his or her entitlement to educational assistance shall be calculated as follows:

(1) VA shall determine the number of years, months and days in the veteran's qualifying period of service by subtracting the entry on duty date from the release from active duty date. Any deductible time under § 3.15 of this chapter (during the period of service on which eligibility is based) will be excluded from the calculation.

(2) VA shall convert the number of years determined in paragraph (a)(1) of this section to months by multiplying them by 12.

(3) VA shall convert the number of days determined in paragraph (a)(1) of this section to 0 months if there are 14 days or less, and to 1 month is there are more than 14 days.

(4) VA shall determine the number of total months by adding the number of months determined in paragraph (a)(1) of this section (exclusive of years and days) to the number of months determined in paragraph (a)(2) of this section, and the number of months in paragraph (a)(3).

(5) VA shall multiply the number of total months in paragraph (a)(4) of this section by 75.

(Authority: 10 U.S.C. 2142(a)(2))

(b) *Subsistence allowance.* A veteran or servicemember shall be entitled to nine months of subsistence allowance for each standard academic year of entitlement to educational assistance. For each period of entitlement to educational assistance which is shorter than a standard academic year, a veteran or servicemember will be entitled to one month of subsistence allowance for each month of entitlement to educational assistance. This entitlement shall not exceed nine months.

(Authority: 10 U.S.C. 2144)

[51 FR 27026, July 29, 1986, as amended at 51 FR 29471, Aug. 18, 1986]

### § 21.5743 Transfer of entitlement.

(a) *Entitlement may be transferred.* (1) A veteran or servicemember may transfer all or part of his or her entitlement to educational assistance and subsistence allowance to a spouse or dependent child. He or she may not transfer entitlement to more than one person at a time.

(2) The Secretary of the Navy may authorize a member or veteran of the Navy or Marine Corps to make a transfer described in paragraph (a)(1) of this section provided:

(i) The servicemember or veteran has entitlement to educational assistance as provided in § 21.5742;

(ii) The enlistment that established the servicemember's or veteran's entitlement was his or her second reenlistment as a member of the Armed Forces;

(iii) The servicemember or veteran has completed at least four years of active service of that second reenlistment; and

(iv) The servicemember's or veteran's second reenlistment was for a period of at least six years.

(3) No transfer, other than one described in paragraph (a)(2) of this section, may be made until the veteran or servicemember—

(i) Has completed the enlistment upon which his or her entitlement is based or has been discharged for reasons described in §21.5740(b)(2), and

(ii) Has thereafter reenlisted.

(4) The servicemember or veteran may revoke at any time a transfer described in either paragraph (a) (2) or (3) of this section.

(5) If a veteran attempts to transfer entitlement after 10 years have elapsed from the date he or she has retired, has been discharged or has otherwise been separated from active duty, the transfer shall be null and void.

(Authority: 10 U.S.C. 2147(a), 2148; Pub. L. 99–145)

(b) *Transfer of entitlement upon death of veteran or servicemember.* (1) A veteran's or servicemember's entitlement to educational assistance and subsistence allowance shall be transferred automatically subject to provisions of paragraph (b)(2) of this section, provided he or she—

(i) Completed the enlistment upon which the entitlement is based;

(ii) Thereafter reenlisted;

(iii) Never elected not to transfer entitlement; and

(iv) Dies while on active duty or within 10 years from the date he or she retired, was discharged, or was otherwise separated from active duty.

(2) The veteran's or servicemember's entitlement will be transferred to—

(i) The veteran's or servicemember's surviving spouse, or

(ii) If the veteran or servicemember has no surviving spouse, the veteran's or servicemember's dependent children.

(3) A surviving spouse who receives entitlement under paragraph (b)(2) of this section may elect to transfer that entitlement to the veteran's or servicemember's dependent children.

(4) If a servicemember transfers entitlement and then dies, and the effective date of the transfer is more than 10 years from the date of his or her death, the transfer shall be void. The entitlement will be transferred automatically as provided in paragraph (b)(2) of this section.

(Authority: 10 U.S.C. 2147(a))

(c) *Effect of transfer upon educational assistance and subsistence allowance: veteran or servicemember living.* (1) A person to whom a veteran or servicemember transfers entitlement is entitled to educational assistance and subsistence allowance in the same manner and at the same rate as the person from whom entitlement was transferred.

(2) The total entitlement transferred to the veteran's or servicemember's spouse and children shall not exceed the veteran's or servicemember's remaining entitlement. The veteran or servicemember may transfer entitlement to only one person at a time.

(Authority: 10 U.S.C. 2147)

(d) *Effect of transfer upon educational assistance and subsistence allowance: Veteran or servicemember deceased.* (1) A person to whom entitlement is transferred after the death of a veteran or servicemember is entitled to payment of educational assistance and subsistence allowance in the manner as the veteran or servicemember. The rate of educational assistance and subsistence allowance will be as stated in §§21.5820 and 21.5822.

(2) If entitlement is transferred to more than one person following the death of a veteran or servicemember, the total remaining entitlement to educational assistance and subsistence allowance of all is equal to the total entitlement of the person on whose service entitlement is based.

(Authority: 10 U.S.C. 2147)

(e) *Revocation of a transfer of entitlement.* A surviving spouse who has transferred entitlement to a dependent child may revoke the transfer by notifying VA in writing. A veteran or servicemember who has transferred entitlement may revoke that transfer by notifying VA in writing. The veteran, servicemember or surviving spouse may choose the effective date of the revocation subject to the following conditions:

(1) If the person to whom entitlement is transferred never enters training, the effective date of the revocation may be any date chosen by the veteran, servicemember or surviving spouse who transferred the entitlement.

(2) If the person to whom entitlement is transferred is not in training on the date the VA processes the revocation, but he or she has trained before that date, the effective date of the revocation may be no earlier than the last date that person was in training for which educational assistance and subsistence allowance were payable.

(3) If the person to whom entitlement is transferred is in training (for which educational assistance and subsistence allowance are payable) on the date the VA processes revocation, the effective date of the revocation may be no earlier than—

(i) The last date of the term, quarter, or semester at the accredited institution where that person is enrolled, or

(ii) If the accredited institution is not organized on a term, quarter or semester basis, the last date of the course or the last date of the school year, whichever is earlier.

(Authority: 10 U.S.C. 2147)

[51 FR 27026, July 29, 1986, as amended at 53 FR 1779, Jan. 22, 1988]

### § 21.5744 Charges against entitlement.

(a) *Charges against entitlement to educational assistance.* (1) Except as provided in paragraph (a)(2) of this section VA will make a charge against an individual's entitlement to educational assistance of—

(i) One month for each month of a term, quarter or semester—

(A) For which the servicemember receives educational assistance, and

(B) During which the servicemember is a full-time student; and

(ii) One-half month for each month of a term, quarter or semester—

(A) For which the individual receives educational assistance, and

(B) During which the servicemember is a part-time student.

(2) VA will prorate the entitlement charge if the individual—

(i) Is a student for only part of a month, or

(ii) The individual is a full-time student for part of a month and a part-time student for part of the same month.

(3) The charge against entitlement to educational assistance should always equal the charge against entitlement to subsistence allowance for the same enrollment period.

(b) *Charges against entitlement to subsistence allowance.* (1) For each individual, except servicemembers, VA will make a charge against an individual's entitlement to subsistence allowance of—

(i) One month for each month the individual is a full-time student receiving subsistence allowance; and

(ii) One-half for each month the individual is a part-time student receiving subsistence allowance.

(2) Even though a servicemember may not receive subsistence allowance, VA will make a charge against a servicemember's entitlement to subsistence allowance of—

(i) One month for each month of a term, quarter or semester—

(A) For which the servicemember received educational assistance and

(B) During which the servicemember is a full-time student; and

(ii) One-half month for each month of a term, quarter or semester—

(A) For which the servicemember received educational assistance, and

(B) During which the individual is a part-time student.

(3) VA will prorate the entitlement charge as stated in paragraph (b) (1) or (2) of this section during any month for which a servicemember receives educational assistance or for which the individual receives subsistence allowance—

(i) For less than a full month, or

(ii) At the full-time rate for part of a month and at the part-time rate for part of the same month.

(Authority: 10 U.S.C. 2142)

### § 21.5745 Period of entitlement.

(a) *Veterans.* The period of entitlement of a veteran expires on the first day following ten years from the date the veteran retires or is discharged or otherwise separated from active duty.

(Authority: 10 U.S.C. 2148; Pub. L. 96–342)

(b) *Spouses, surviving spouses, and dependent children.* If the veteran's or servicemember's entitlement is transferred, the period of entitlement of the spouse, surviving spouse, or dependent child expires 10 years from—

(1) The date the veteran retires, is discharged or otherwise separated from active duty, or

(2) If the servicemember dies on active duty, the date of the servicemember's death.

(Authority: 10 U.S.C. 2148)

COURSES

**§21.5800 Courses.**

(a) *Courses permitted.* An individual may receive educational assistance and subsistence allowance only while receiving instruction in a postsecondary course offered at any institution in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education.

(Authority: 10 U.S.C. 2142)

(b) *Courses precluded.* An individual shall receive neither educational assistance nor subsistence allowance while pursuing any of the following courses:

(1) A course offered at the secondary level or below;

(2) A course offered by an institution located outside the United States (except in Guam, the Commonwealth of Puerto Rico and the U.S. Virgin Islands);

(3) A course offered by a nonaccredited institution; and

(4) Courses which do not require the student to receive instruction at the institution. These include—

(i) Correspondence courses,

(ii) Combination correspondence—residence courses, and

(iii) Courses offered through independent study.

(Authority: 10 U.S.C. 2143)

CERTIFICATIONS

**§21.5810 Certifications of enrollment.**

(a) *Enrollment certifications.* An individual who wishes to receive educational assistance and subsistence allowance shall ensure that the accredited institution he or she is attending certifies the individual's enrollment to VA.

(Authority: 10 U.S.C. 2141)

(b) *Content of certification.* The certification should include—

(1) The number of credit hours or clock hours in which the individual is enrolled;

(2) The amount of the cost of tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction which the individual will incur during the period of enrollment; and

(3) The beginning and ending dates of the period of enrollment.

(Authority: 10 U.S.C. 2142)

(c) *Length of certification.* A school should not certify more than one term, quarter or semester at a time.

(Authority: 10 U.S.C. 2141)

(Approved by the Office of Management and Budget under control number 2900–0073)

**§21.5812 Reports of withdrawals and terminations of attendance and changes in training time.**

(a) *Reports of withdrawals and terminations of attendance.* (1) An individual shall report to VA facility of jurisdiction whenever he or she withdraws from school or terminates his or her attendance. He or she shall report the last day of attendance. The individual may request that the school verify this information.

(2) The report shall include—

(i) The date of withdrawal or last date of attendance, as appropriate; and

(ii) The amount of educational expenses actually incurred by the individual during the period of enrollment before the date of withdrawal, or if the individual does not formally withdraw when he or she stops attending the

amount of educational expenses actually incurred by the individual during the period of enrollment before the last date of attendance.

(Authority: 10 U.S.C. 2141)

(b) *Reports of changes in training.* (1) An individual shall report to the VA field station of jurisdiction each time the individual increases or decreases the number of credit hours or clock hours of training in which he or she is enrolled or otherwise alters the duration of the enrollment.

(2) The report shall include—

(i) The new number of credit hours or clock hours in which the individual is enrolled;

(ii) The amount of educational expenses, enumerated in § 21.5810(b)(2), which the individual will incur during the revised period of enrollment; and

(iii) The effective date of the change in the number of credit hours or clock hours, including any revision in the term of the enrollment.

(3) The individual or VA may ask the school to verify the individual's reports of changes in training.

(Authority: 10 U.S.C. 2141)

(Approved by the Office of Management and Budget under control number 2900–0156)

### § 21.5816 False or fraudulent claims.

Each individual, or school officer or official shall be subject to civil penalties or criminal penalties, or both, under applicable Federal law for submitting a false or fraudulent report, revision to a report, or verification of accuracy of a report used to support an individual's claim, even though the report or verification is provided gratuitously or voluntarily to VA.

(Authority: 31 U.S.C. 3729–3731, 18 U.S.C. 1001)

PAYMENTS—EDUCATIONAL ASSISTANCE AND SUBSISTENCE ALLOWANCE

### § 21.5820 Educational assistance.

(a) *Educational assistance.* Educational assistance will be paid to cover the educational expenses incurred by an eligible servicemember, veteran, spouse, surviving spouse or dependent child while attending an accredited institution. Educational assistance payments will be made to the eligible individual.

(1) The educational expenses are limited to—

(i) Tuition,

(ii) Fees,

(iii) Cost of books,

(iv) Laboratory fees, and

(v) Shop fees for consumable materials used as part of classroom or laboratory instruction.

(2) Educational expenses may not exceed those normally incurred by students at the same educational institution who are not eligible for benefits from the educational assistance test program.

(Authority: 10 U.S.C. 2143(a))

(b) *Amount of educational assistance.* (1) The amount of educational assistance will be adjusted annually by regulation. For the 2003–04 standard academic year the amount of this assistance may not exceed $4,219.

(2) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an enrollment period will be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) For the 2003–04 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $468.78 for a full-time student or by $234.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $15.63 for a full-time student or by $7.81 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long as or longer than the standard academic year, this amount will be decreased by 2 cents for a full-time student and decreased by 1 cent for a part-time student.

(3) The amount of educational assistance payable to each surviving spouse or dependent child of a deceased servicemember or veteran for an enrollment period will be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) For the 2003–04 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $468.78 for a full-time student or by $234.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $15.63 for a full-time student or by $7.81 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be decreased by 2 cents for a full-time student and decreased by 1 cent for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(ii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(ii)(C) will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(Authority: 10 U.S.C. 2143, 2145)

(c) *Time of educational assistance payments.* VA will make payments of educational assistance at the end of the first month of each semester, quarter or term in which the individual is entitled to such a payment, provided VA receives a timely enrollment certification. If VA receives the enrollment certification so late that payment cannot be made at the end of the month in which the individual is enrolled, VA will make payment as soon as practicable.

(Authority: 10 U.S.C. 2143)

[51 FR 27026, July 29, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.5820, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

## § 21.5822 Subsistence allowance.

(a) *Subsistence allowance.* Except as provided in paragraph (a)(2) of this section, VA will pay subsistence allowance to a veteran, spouse, surviving spouse or dependent child during any period for which he or she is entitled to educational assistance. No subsistence allowance is payable to:

(1) A servicemember, even if he or she is entitled to educational assistance, or

(2) A spouse or dependent child of a servicemember, even if the spouse or dependent child is entitled to educational assistance.

(Authority: 10 U.S.C. 2144(a))

(b) *Amount of subsistence allowance.* (1) The following rules govern the amount of subsistence allowance payable to veterans and to spouses and dependent children of veterans who are alive during the period for which subsistence allowance is payable. As stated in paragraph (a) of this section, these amounts are payable only for periods during which the veterans, spouses or dependent children are entitled to educational assistance.

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $1,051 per month for training pursued during the 2003–04 academic year.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $525.50 per month for training pursued during the 2003–04 academic year.

(iii) If a person does not pursue a course of instruction for a complete month VA will prorate the subsistence allowance for that month on the basis of 1/30th of the monthly rate for each day the person is pursuing the course.

(2) The following rules govern the amount of subsistence allowance payable to surviving spouses and dependent children of deceased veterans and servicemembers.

(i) VA will determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time during the 2003–04 academic year by dividing $1,051 per month by the number of the deceased

veteran's dependents pursuing a course of instruction on that day.

(ii) VA will determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis during the 2003–04 academic year by dividing $525.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144, 2145)

(iii) The total amount of subsistence allowance payable to a person for a month is the sum of the person's daily rates for the month.

(c) *Time of subsistence allowance payments.* VA will make payments of subsistence allowance on the first day of the month following the month for which subsistence allowance is due, provided that VA receives a timely enrollment certification. If VA receives the enrollment certification so late that payment cannot be made on the first day of the month following the month for which subsistence allowance is due, VA will make payment as soon as practicable.

(Authority: 10 U.S.C. 2144)

[51 FR 27026, July 29, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.5822, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 21.5824 Nonduplication: Federal programs.

(a) *Duplication of some benefits prohibited.* An individual who is receiving educational assistance under programs authorized by 38 U.S.C. Chapters 30, 31, 32, 34, 35 or 36 may not receive concurrently either educational assistance or subsistence allowance under the §§ 21.5700, 21.5800 and 21.5900 series of regulations for the same program of education, but may receive them sequentially.

(b) *Debts may result from duplication.* (1) If an individual receives benefits under 38 U.S.C. Chapters 30, 31, 32, 34, 35 or 36 for training, and he or she has previously received educational assistance or subsistence allowance (or both) under §§ 21.5700, 21.5800, 21.5900 series of regulations the amount of the benefits received under 38 U.S.C. Chapters 30, 31, 32, 34 or 35 shall not constitute a debt due the United States.

(2) If an individual receives benefits under 38 U.S.C. Chapter 34, and had signed an agreement with the Department of Defense to waive those benefits in return for receiving benefits under the educational assistance test program:

(i) Any benefits already paid under the educational assistance test program will constitute a debt due the United States, and

(ii) No further benefits under the educational assistance test program will be paid to the individual or to anyone to whom entitlement may be transferred.

(Authority: 10 U.S.C. 2141)

### § 21.5828 False or misleading statements.

(a) *False statements.* An individual who attempts to obtain educational assistance or subsistance allowance or both through submission of false or misleading statements is subject to civil penalties or criminal penalties or both under applicable Federal law.

(Authority: 31 U.S.C. 3729–3731; 18 U.S.C. 1001)

(b) *Effect of false statements on subsequent payments.* A determination that false or misleading statements have been made will not constitute a bar to payments based on training to which the false or misleading statements do not apply.

(Authority: 10 U.S.C. 2141, 2144)

### § 21.5830 Payment of educational assistance.

(a) *Timing and release of payments.* VA will pay educational assistance to the individual on the last day of the calendar month during which the individual enters or reenters training.

(Authority: 10 U.S.C. 2143)

(b) *Period covered by payments.* The payments cover those expenses, listed in § 21.5820(a) incurred for the period beginning on the commencing date of the individual's subsistence allowance and

ending on the ending date of the individual's subsistence allowance. See § 21.5831.

(Authority: 10 U.S.C. 2143)

**§ 21.5831 Commencing date of subsistence allowance.**

The commencing date of an award or increased award of subsistence allowance will be determined by this section

(a) *Entrance or reentrance.* Latest of the following dates:

(1) Date certified by school or establishment under paragraph (b) or (c) of this section.

(2) Date 1 year before the date of receipt of the application or enrollment certification.

(3) Date of reopened application under paragraph (d) of this section.

(4) In the case of a spouse, surviving spouse, or dependent child, the date that transfer of eligibility and entitlement to the individual was effective.

(Authority: 10 U.S.C. 2144)

(b) *Certification by the school-course leads to a standard college degree.* The date of registration or the date of reporting where the student is required by the school's published standard to report in advance of registration, but not later than the date the individual first reports for classes.

(Authority: 10 U.S.C. 2144)

(c) *Certification by school or establishment-course does not lead to a standard college degree.* First date of class attendance.

(Authority: 10 U.S.C. 2144(a))

(d) *Reopened application after abandonment.* Date of receipt in VA of application or enrollment certification, whichever is later.

(e) *Increase due to increased training time.* The date the school certifies the individual became a full-time student.

(f) *Liberalizing laws and administrative issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 10 U.S.C. 2144)

(g) *Correction of military records.* When a veteran becomes eligible following corection or modification of military records under 10 U.S.C. 1552 or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553; or other competent military authority, the commencing date of subsistence allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department.

(Authority: 10 U.S.C. 2142)

**§ 21.5834 Discontinuance dates: General.**

(a) *Educational assistance.* Although educational assistance is paid only once in a term, quarter, or semester, VA may discontinue it under the circumstances stated in § 21.5835. The discontinuance may cause an overpayment. (See also § 21.5838.) If the individual dies during an enrollment period, the provisions of § 21.5835(a) will apply, even if other types of discontinuances are involved. In all other cases where more than one type of reduction or discontinuance is involved, the earliest date found in § 21.5835 will control.

(Authority: 10 U.S.C. 2143)

(b) *Subsistance allowance.* The effective date of a reduction or discontinuance of subsistence allowance will be as specified in § 21.5835. If more than one type of discontinuance is involved, the earliest date will control.

(Authority: 10 U.S.C. 2144)

**§ 21.5835 Specific discontinuance dates.**

The following rules will govern reduction and discontinuance dates for educational assistance and subsistence allowance.

(a) *Death of individual.* If an individual dies—

(1) VA will discontinue educational assistance effective the last day of the most recent term, quarter, semester or enrollment period of which the individual received educational assistance.

(2) VA will discontinue subsistence allowance effective the individual's last date of attendance.

(Authority: 10 U.S.C. 2144)

(b) *Lump-sum payment.* When a servicemember accepts a lump-sum payment in lieu of educational assistance, VA will discontinue educational assistance effective the date on which he or she elects to receive the lump-sum payment.

(Authority: 10 U.S.C. 2146)

(c) *Reduction due to decreased training time.* (1) If a decrease in an individual's training time requires a decrease in educational assistance, the decrease is effective the end of the month in which the individual become a part-time student or the end of the term, whichever is earlier.

(2) When an individual decreases his or her training time from full-time to part-time, VA will decrease his or her subsistence allowance effective the end of the month in which the individual became a part-time student, or the end of the term, whichever is earlier.

(Authority: 10 U.S.C. 2143, 2144)

(d) *Course discontinued, interrupted, terminated or withdrawn from.* If an individual withdraws, discontinues, ceases to attend, interrupts or terminates all courses, VA will discontinue educational assistance and subsistence allowance effective the last date of attendance.

(Authority: 10 U.S.C. 2143)

(e) *False claim.* VA will discontinue educational assistance and subsistence allowance effective the first day of the term for which the false claim is submitted.

(Authority: 10 U.S.C. 2141)

(f) *Withdrawal of accreditation.* If an accrediting agency withdraws accreditation from a course in which an individual is enrolled, VA will discontinue educational assistance and subsistence allowance effective the end of the month in which the accrediting agency withdrew accreditation, or the end of the term, whichever is earlier.

(Authority: 10 U.S.C. 2143(c), 2144)

(g) *Remarriage of surviving spouse.* VA will discontinue educational assistance and subsistence allowance effective the last date of attendance before the date on which the surviving spouse remarries.

(Authority: 10 U.S.C. 2147(d))

(h) *Divorce.* If entitlement has been transferred to the veteran's or servicemember's spouse, and the spouse is subsequently divorced from the veteran or servicemember, the spouse's award of educational assistance and subsistence allowance will end on the last date of attendance before the divorce decree becomes final.

(Authority: 10 U.S.C. 2147(d))

(i) *Revocation of transfer.* If a veteran or servicemember revokes a transfer of entitlement, the spouse's or dependent child's award of educational assistance will end on the effective date of the revocation. See § 21.5743(e).

(Authority: 10 U.S.C. 2147)

(j) *Dependent child ceases to be dependent: veteran or servicemember living.* If a veteran or servicemember is living and has transferred entitlement to his or her dependent child who is not incapable of self support due to physical or mental incapacity, VA will discontinue the dependent child's award of educational assistance and subsistence allowance whenever the child does not meet the definition of a *dependent child* found in § 21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The child's 21st birthday, if on that date—

(i) The veteran or servicemember is not providing over one-half the child's support, or

(ii) The child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date, following the child's 21st birthday, on which the veteran or

servicemember stops providing over one-half the child's support;

(3) The date, following the child's 21st birthday, on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(4) The child's 23rd birthday;

(5) the date the child marries.

(Authority: 10 U.S.C. 2147(d))

(k) *Dependent child ceases to be dependent: veteran or servicemember deceased.* If a veteran or servicemember is deceased and his or her dependent child is not incapable of self support due to physical or mental incapacity, VA will discontinue the dependent child's award of educational assistance whenever the child does not meet the definition of a *dependent child* found in § 21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The day after the child's 21st birthday, if on that date the child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date following the child's 21st birthday on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(3) The child's 21st birthday; or

(4) The date the child marries.

(Authority: 10 U.S.C. 2147(d))

### § 21.5838 Overpayments.

(a) *Educational assistance.* If an individual receives educational assistance but the educational assistance must be discontinued according to § 21.5835, the amount of educational assistance attributable to the portion of the term, quarter or semester following the effective date of discontinuance shall constitute a debt due the United States.

(1) The amount of the debt is equal to the product of—

(i) The number of days the individual was entitled to receive subsistence allowance during the enrollment period for which educational assistance was paid, divided by the total number of days in that enrollment period, and

(ii) The amount of educational assistance provided for that enrollment period.

(2) Nothing in this method of calculation shall change the fact that the number of months of educational assistance to which the individual remains entitled shall always be the same as the number of months of subsistence allowance to which the individual is entitled.

(Authority: 10 U.S.C. 2143)

(b) *Subsistence allowance.* If an individual receives subsistence allowance under any of the following conditions, the amount of that subsistence allowance shall constitute a debt due the United States unless the debt is waived as provided by §§ 1.955 through 1.970 of this chapter.

(1) Subsistence allowance received for courses pursued while on active duty;

(2) Subsistence allowance received for courses which are precluded under § 21.5800(b);

(3) Subsistence allowance received by a person who is not eligible for educational assistance under § 21.5740;

(4) Subsistence allowance received by an individual who has exhausted all entitlement provided under § 21.5742;

(5) Subsistence allowance received by an individual for a period before the commencing date determined by § 21.5831.

(6) Subsistence allowance received by an individual for a period following a discontinuance date determined by § 21.5835.

(7) Subsistence allowance received by an individual in excess of the part-time rate for a period following a reduction date determined by § 21.5835.

(Authority: 10 U.S.C. 2144)

MEASUREMENT OF COURSES

### § 21.5870 Measurement of courses.

(a) *Credit hour measurement: undergraduate, standard term.* An individual who enrolls in a standard quarter or semester for 12 undergraduate credit

hours is a full-time student. An individual who enrolls in a standard quarter or semester for less than 12 undergraduate credit hours is a part-time student.

(Authority: 10 U.S.C. 2144(c))

(b) *Credit hour measurement: Undergraduate, nonstandard term.* (1) If an individual enrolls in a nonstandard term, quarter or semester, and the school measures the course on a credit-hour basis, VA will determine whether that individual is a full-time student by—

(i) Multiplying the credits earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and

(ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks VA will—

(i) Divide the number of days in the term by 7;

(ii) Disregard a remainder of 3 days or less, and

(iii) Consider 4 days or more to be a whole week.

(3) If the number obtained by using the formula in paragraphs (b)(1) and (2) of this section is 12 or more, the individual is a full-time student. If that number is less than 12, the individual is a part-time student.

(c) *Credit hour measurement: graduate.* (1) If it is the established policy of a school to consider less than 12 credit hours to be full-time for graduate students, VA will accept the statement of a responsible school offical as to whether the student is a full-time or part-time student. If the school does not have such a policy, VA will measure the student's enrollment according to the provisions of paragraphs (a) and (b) of this section.

(2) VA will measure undergraduate courses required by the school according to the provisions of paragraphs (a) and (b) of this section, even though the individual is enrolled as a graduate student. If the individual is taking both graduate and undergraduate courses, the school will report the credit-hour equivalent of the graduate work. VA will first measure the undergraduate courses according to the provisions of paragraphs (a) and (b) of this section and combine the result with the credit-hour equivalent of the graduate work in order to determine the extent of training.

(d) *Clock hour measurement.* (1) If an individual enrolls in a course measured in clock hours and shop practice is an integral part of the course, he or she is a full-time student when enrolled in 22 clock hours or more per week with not more than a 2½ hour rest period allowance per week. For all other enrollments the individual is a part-time student. VA will exclude supervised study in determining the number of clock hours in which the individual is enrolled.

(2) If an individual enrolls in a course measured in clock hours and theory and class instruction predominate in the course, he or she is a full-time student enrolled in 18 clock hours or more per week. He or she is a part-time student when enrolled in less than 18 clock hours per week. Customary intervals not to exceed 10 minutes between classes will be included in measuring net instruction. Shop practice, rest periods, and supervised study are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

(Authority: 10 U.S.C. 2144(c))

ADMINISTRATIVE

### § 21.5900 Administration of benefits program—chapter 107, title 10 U.S.C.

In administering benefits payable under Chapter 107, Title 10 U.S.C, VA will be bound by the provisons of the §§ 21.5700, 21.5800 and 21.5900 series of regulations.

(Authority: 10 U.S.C. 2144(c))

### § 21.5901 Delegations of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA, designated by him or her to make findings and decisions under 10 U.S.C.

chapter 107 and the applicable regulations, precedents and instructions concerning the program authorized by these regulations.

(Authority: 10 U.S.C. 2144(c))

(b) *Delegation of authority concerning the Civil Rights Act of 1984.* The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with title VI of the Civil Rights Act of 1964 from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this title.

(Authority: 42 U.S.C. 2000)

[51 FR 27026, July 29, 1986, as amended at 62 FR 55761, Oct. 28, 1997]

## Subpart I—Temporary Program of Vocational Training for Certain New Pension Recipients

AUTHORITY: Pub. L. 98–543, 38 U.S.C. 501 and chapter 15, sections specifically cited, unless otherwise noted.

SOURCE: 53 FR 4397, Feb. 16, 1988, unless otherwise noted.

NOTE: This subpart includes regulations governing the determination of eligibility, and the services which may be provided to veterans under this program. The numbering of the regulations follows the numbering of regulations under 38 U.S.C. chapter 31 to the extent possible. Additional regulations affecting this program are found in part 3 and part 17, Title 38, Code of Federal Regulations.

GENERAL

### § 21.6001 Temporary vocational training program for certain pension recipients.

This program provides certain veterans awarded pension with an evaluation and, if feasible, with vocational training, employment assistance and other services to enable them to achieve a vocational goal.

(Authority: 38 U.S.C. 1524, Pub. L. 100–687)

[55 FR 17271, Apr. 24, 1990]

### § 21.6005 Definitions.

(a) *Temporary program.* The term *temporary program* means the program of vocational training for certain pension recipients authorized by section 1524, chapter 15, title 38 U.S.C.

(Authority: 38 U.S.C. 1524, Pub. L. 100–687)

(b) *Program period.* The term *program period* means the period beginning on February 1, 1985, and ending on December 31, 1992.

(Authority: 38 U.S.C. 1524(a)(4); Pub. L. 102–291).

(c) *Qualified veteran.* The term *qualified veteran* means—

(1) A veteran awarded disability pension during the program period; or

(2) A veteran who was awarded disability pension prior to the beginning of the program period on February 1, 1985, has been continuously in receipt of pension since that time, and is in receipt of pension on the date his or her claim for assistance under the vocational training program is received by VA.

(Authority: 38 U.S.C. 1524(a), Pub. L. 100–687)

(d) *Program participant.* The term *program participant* means a qualified veteran as defined in paragraph (c) of this section who, following an evaluation in which VA finds achievement of a vocational goal is reasonably feasible for the veteran, elects to participate in a vocational training program.

(Authority: 38 U.S.C. 1524(a), Pub. L. 100–687)

(e) *Vocational training program.* The term *vocational training program* means vocationally oriented services and assistance of the kind provided under chapter 31 of the title 38 U.S.C. and such other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for, and participate in, vocational training or employment.

(Authority: 38 U.S.C. 1524(b))

(f) *Employment assistance.* The term *employment assistance* means employment counseling and placement and postplacement services, and personal and work adjustment training.

(Authority: 38 U.S.C. 1524(d)(3))

(g) *Program of employment services.* The term *program of employment services* is used when the veteran's entire program is limited to employment assistance as that term is defined in paragraph (f) of this section.

(Authority: 38 U.S.C. 1524(b)(4))

(h) *Job development.* The term *job development* means comprehensive professional services to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran.

(Authority: 38 U.S.C. 1524(b)(3)).

(i) *Institution of higher learning.* The term *institution of higher learning* shall have the same definition as is provided in § 21.4200(a) of this part.

(Authority: 38 U.S.C. 1524(b)(2))

(j) *Other terms.* The following terms shall have the same meaning or explanation provided in § 21.35 of this part.

(1) Vocational goal.

(2) Program of education.

(3) Rehabilitation to the point of employability.

(4) Counseling psychologist.

(5) Vocational rehabilitation specialist.

(6) School, educational institution or institution.

(7) Training establishment.

(8) Rehabilitation facility.

(9) Workshop.

(Authority: 38 U.S.C. 1524)

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17271, Apr. 24, 1990; 57 FR 28086, June 24, 1992; 58 FR 41637, Aug. 5, 1993]

### § 21.6010 Applicability of rules and administrative procedures under 38 U.S.C., Chapter 31.

(a) *General.* Title 38 U.S.C., section 1524(b)(2)(A) provides, in part, that a vocational training program shall consist of vocationally oriented services and assistance of the kind provided service-disabled veterans under chapter 31, Title 38 U.S.C., and other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1524(b)(2)(A))

(b) *Applicable chapter 31 rules—general.* The rules and procedures in force for administration of the chapter 31 program (§§ 21.1–21.430) are deemed to be applicable to administration of this program in so far as their use shall not conflict with 38 U.S.C. 1524 or the rules under this subpart. Where a particular grouping of chapter 31 rules are generally applicable, without modification, the rules under this subpart will be deemed to incorporate the chapter 31 rules. The chapter 31 rules may be read as written, but terms such as *chapter 31* and *service-connected disability* shall be understood to read *chapter 15* and *disabilities* whenever used. References in the chapter 31 rules to benefits (subsistence allowances, loans) or eligibility (dependents, service-connection, serious employment handicap) are to be considered inapplicable to this program and do not confer benefits or rights not provided by 38 U.S.C. 1524.

(Authority: 38 U.S.C. 1524)

### § 21.6015 Claims and elections.

(a) *Claims by veterans under age 45 for whom participation in an evaluation is required.* A veteran under age 45 who is awarded pension during the program period will be scheduled for an evaluation to determine whether achievement of a vocational goal is reasonably feasible, unless it is determined that the veteran is unable to participate in an evaluation for reasons beyond his or her control. If VA, as a result of the evaluation, determines that achievement of a vocational goal is reasonably feasible, the veteran may elect to pursue a vocational training prgoram. To make this election, the veteran must file a claim, in a form prescribed by VA, for services under this temporary program.

(Authority: 38 U.S.C. 1524(b); Pub. L. 100–687, Pub. L. 100–687, Pub. L. 101–237)

(b) *Claims by qualified veterans for whom participation in an evaluation is not required.* Qualified veterans in the following categories will be provided

an evaluation if they request assistance under the temporary program, and are found to have good employment potential. These veterans include:

(1) Veterans age 45 and more who are awarded pension during the program period;

(2) Veterans awarded pension prior to the beginning of the program period on February 1, 1985, who meet the conditions contained in §21.6005(c) of this part.

(Authority: 38 U.S.C. 1524(b), Pub. L. 100–687, Pub. L. 101–237)

(c) *Filing a claim.* A veteran in one of the categories identified in paragraph (b) of this section must file a claim in the form prescribed by VA in order to be considered for an evaluation of his or her ability to achieve a vocational goal through participation in this temporary program. The veteran's claim is considered a request for both the evaluation, and if achievement of a vocational goal is found reasonably feasible, for participation in the vocational training program.

(Authority: 38 U.S.C. 1524, Pub. L. 100–687)

(d) *Claims following failure to timely pursue a vocational training program.* (1) If a veteran for whom achievement of a vocational goal is found reasonably feasible does not undertake a vocational training program within the time limits specified in §21.32, he or she must file an original or reopened claim, as appropriate, in a form prescribed by VA in order to be considered for such services to determine if achievement of the previous vocational goal or a new vocational goal is reasonably feasible.

(2) If a veteran has been placed in discontinued case status by the VA, he or she must file a new claim in a form prescribed by the VA to reopen the case.

(Authority: 38 U.S.C. 1524(b))

(e) *Informal claims.* Informal claims shall be governed by §21.31 of this part.

(Authority: 38 U.S.C. 1524(a))

(f) *Time limit.* The time limit for making a claim to pursue a vocational training program shall be governed by §21.32 of this part.

(Authority: 38 U.S.C. 1524(a))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17271, Apr. 24, 1990; 56 FR 21448, May 9, 1991]

### §21.6021 Nonduplication—38 U.S.C., chapters 30, 31, 32, 34 and 35.

(a) *Election between this temporary program and chapter 31 required.* A service-disabled veteran awarded VA pension who is offered a vocational training program under 38 U.S.C. chapter 15 and is also eligible for such assistance under chapter 31, must elect which benefit he or she will receive. The veteran may reelect at any time if he or she is still eligible for the benefit desired.

(Authority: 38 U.S.C. 1524(b)(2); Pub. L. 100–687)

(b) *VA educational assistance programs.* A veteran who is eligible under this program may receive an educational assistance allowance under chapter 30, 32, 34 or 35 if he or she is otherwise eligible under one of these programs.

(Authority: 38 U.S.C. 1524(b)(2))

(c) *Prior training under VA programs.* If a veteran has pursued an educational or training program under chapter 30, 32, 34 or 35, or a vocational rehabilitation program under chapter 31, the training received in the earlier program shall be considered, to the extent feasible, in determining the character and duration of the services to be furnished under this program.

(Authority: 38 U.S.C. 1524(b)(1))

(d) *Other prior training.* If a veteran has pursued other significant training under non-VA programs or on his or her own, such training will be considered in determining the character and duration of services to be furnished.

(Authority: 38 U.S.C. 1524(b)(1))

(e) *Not limited by use of other entitlement.* The number of months of services provided under this program are not subject to the provisions of §21.4020 of

this part which limit the aggregate months of VA benefits to be provided.

(Authority: 38 U.S.C. 1524(b)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990]

BASIC ELIGIBILITY REQUIREMENTS

**§ 21.6040 Eligibility for vocational training and employment assistance.**

(a) *Basic eligibility requirements.* A veteran may be provided vocational training, employment assistance and related services to achieve a vocational goal under this program, if the following basic requirements are met:

(1) The veteran is a qualified veteran as described in § 21.6005(c) of this part;

(2) The veteran participates in a VA evaluation of his or her rehabilitation potential to determine whether achievement of a vocational goal is reasonably feasible;

(3) Achievement of a vocational goal is found reasonably feasible, following evaluation by VA;

(4) The veteran elects to pursue a vocational training program;

(5) The veteran and VA develop and agree to an Individualized Written Rehabilitation Plan (IWRP) identifying the vocational goal and the means through which this goal will be achieved.

(Authority: 38 U.S.C. 1524(a)(1))

(b) *Eligibility for employment assistance.* (1) As provided in this paragraph, a veteran who is a participant in this program shall be eligible to receive counseling, placement, postplacement, work and personal adjustment services furnished under § 21.6060(a)(2) of this part for a period not to exceed 18 months. These services are further described in §§ 21.140(d)(2), 21.250(a), (b)(2), (c)(3), and (4), and 21.252, 21.254, 21.256, 21.257, and 21.258 of this part.

(2) The participants who qualify for the services described in paragraph (a) of this section include a veteran who:

(i) Has completed a vocational rehabilitation training program;

(Authority: 38 U.S.C. 1524(b)(3))

(ii) Undertakes a vocational training program, but voluntarily terminates training. If VA determines the veteran to be employable at the time participation in training ends, the veteran shall be deemed to have completed the vocational training program and may be provided the employment services described in paragraph (b)(1) of this section if he or she requests such assistance;

(Authority: 38 U.S.C. 1524(b)(3))

(iii) Does not require a vocational training program because VA determines as a result of an evaluation that he or she already possesses the training necessary for suitable employment and is able to achieve a vocational goal without further training; and

(Authority: 38 U.S.C. 1524(b)(2))

(iv) Has been a prior participant in a vocational training program, is currently employable, but needs employment assistance to obtain employment in a suitable occupation.

(Authority: 38 U.S.C. 1524(b)(2))

(3) The 18-month period of employment services allowed under this section shall begin upon the date that a veteran under paragraph (b)(2)(i) of this section completes the vocational training program or in the case of a veteran under paragraphs (b)(2)(ii), (iii), and (iv) of this section is found to be employable. If a veteran has been provided such services and obtains suitable employment, but is later found to require additional services of this kind, the veteran may be provided such additional services during any portion of the original 18-month period remaining.

(Authority: 38 U.S.C. 1524(b); Pub. L. 100–687)

(c) *Eligibility if pension is terminated.* A qualified veteran for whom a program of vocational training has been found reasonably feasible shall remain eligible for the temporary program, subject to the rules of this subpart and section 1524 of 38 U.S.C. ch. 15, even if his or her pension award is subsequently terminated, except when the veteran's

award of VA pension was the result of fraud or administrative error.

(Authority: 38 U.S.C. 1524(a); Pub. L. 100–687)

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990]

### § 21.6042 Entry, reentry and completion.

(a) *Dates of entry*. A veteran found eligible under the provisions of § 21.6040 of this part may not begin pursuit of a vocational training program before February 1, 1985, or later than December 31, 1992, except under the following circumstances:

(1) The veteran receives a pension award less than 120 days before December 31, 1992;

(2) Illness or other circumstance beyond the veteran's control prevent earlier entry.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102–291)

(b) *Entry precluded*. In no event may a veteran begin a vocational training program after August 1, 1993.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100–687; Pub. L. 102–291)

(c) *Reentry*. The provisions of paragraphs (a) and (b) of this section are also applicable to veterans reentering a vocational training program following a redetermination of eligibility.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102–291)

(d) *Final termination of services*. No veteran may receive assistance under this temporary program after January 31, 1998.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100–687; Pub. L. 102–291)

(e) *Provision of vocational training and services during the period beginning February 1, 1992 and ending May 20, 1992*. The provision of a vocational training program (including related evaluations and other related services) to a veteran under the provisions of subpart I of this part, and related determinations during the period beginning February 1, 1992, and ending May 20, 1992, is ratified.

(Authority: Pub. L. 102–291)

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 58 FR 41637, Aug. 5, 1993]

EVALUATION

### § 21.6050 Participation of eligible veterans in an evaluation.

(a) *Veterans under age 45*. A veteran under age 45 awarded pension during the program period shall be provided an evaluation of his or her rehabilitation potential to determine whether achievement of a vocational goal is reasonably feasible. The veteran must report for and participate in the evaluation unless the failure to do so is for reasons beyond the veteran's control. Failure to report for and participate in the evaluation, for reasons other than those beyond the veteran's control, will result in suspension of the veteran's pension under § 3.342 of this chapter. See § 21.6056.

(Authority: 38 U.S.C. 1524(a)(1), Pub. L. 101–237)

(b) *Evaluating other qualified veterans*. An evaluation shall be accorded each qualified veteran as described in § 21.6005(c) of this part who seeks to become a program participant provided VA first determines the veteran has good potential for achieving employment. Failure to choose to participate in an evaluation shall have no adverse effect upon the veteran's continued receipt of pension under § 3.342 of this chapter.

(Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100–687)

(c) *Notice to eligible veteran*. (1) A qualified veteran under age 45 awarded pension during the program period for whom participation in an evaluation is not clearly precluded by reasons beyond the veteran's control shall be sent a notice at the time he or she is awarded pension. The notice will inform the veteran of the provisions of this temporary program, the conditions under which participation in an evaluation is required, and the consequences of nonparticipation.

(2) A qualified veteran age 45 or older awarded pension during the program period will be informed of the provisions of this temporary program and the procedure for requesting an evaluation.

(Authority: 38 U.S.C. 1524(a); Pub. L. 100–687, Pub. L. 101–237)

(d) *Scheduling the evaluation.* (1) An evaluation will be arranged as promptly as practicable for each qualified veteran:

(i) Under age 50 who is sent the notice required under paragraph (c)(1) of this section; and

(ii) [Reserved]

(2) Other qualified veterans identified in § 21.6005(c) who are found to have good employment potential under § 21.6054.

(Authority: 38 U.S.C. 1524(a); Pub. L. 100–687)

(e) *Followup of qualified veterans who do not complete an evaluation.* The case of each qualified veteran under age 45 awarded pension during the program period for whom an evaluation was not scheduled or who does not complete an evaluation shall be reviewed for followup action by Vocational Rehabilitation and Employment (VR&E) staff as provided in §§ 21.197(c)(4) and 21.198(d).

(Authority: 38 U.S.C. 1524(a); Pub. L. 100–687, Pub. L. 101–237)

(f) *Limitation on the number of evaluations.* Notwithstanding the provisions of paragraphs (a) through (e) of this section, the number of evaluations which may be provided under this temporary program is subject to the limitations contained in § 21.6059 of this part.

(Authority: 38 U.S.C. 1524(a)(3))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 56 FR 21448, May 9, 1991]

### § 21.6052 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program shall be the same as for an evaluation of the reasonable feasibility of achieving a vocational goal under the procedures described for chapter 31 benefits. *See § 21.50(b)(5) and § 21.53 (d) and (f).*

(Authority: 38 U.S.C. 1524(a)(1)(2))

(b) *Specific services which may be provided in the course of evaluation in determining the reasonable feasibility of achieving a vocational goal.* The following specific services may be provided as a part of the evaluation of reasonable feasibility of achieving a vocational goal, as appropriate:

(1) Assessment of feasibility by a counseling psychologist;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical and other diagnostic services;

(4) Evaluation of employability, for a period not to exceed 30 days, by professional staff of an educational or rehabilitation facility.

(Authority: 38 U.S.C. 1524(b))

(c) *Responsibility for evaluation.* All determinations as to the reasonable feasibility of vocational training and entitlement to assistance under 38 U.S.C. 1524 shall be made by a counseling psychologist in the Vocational Rehabilitation and Employment Division.

(Authority: 38 U.S.C. 1524(b))

### § 21.6054 Criteria for determining good employment potential.

(a) *Determining good employment potential.* Before scheduling an evaluation of feasibility to pursue a vocational goal for a qualified veteran under § 21.6005(c)(2), VA will first determine whether the veteran has good potential for achieving employment if provided a vocational training or employment program. This determination shall be made on the basis of the information of record, including information submitted by the veteran at the time of the veteran's request to participate in this temporary program.

(Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100–687)

(b) *Criteria.* The criteria contained in paragraphs (c) and (d) of this section

are to be applied by Vocational Rehabilitation and Employment professional staff members to determine whether information of record supports a determination that a veteran age 50 or older has good potential for employment. Any reasonable doubt shall be resolved in the veteran's favor.

(Authority: 38 U.S.C. 1524(a)(2))

(c) *Indicators of good potential for employment.* Indicators of good potential for employment include one or more of the following:

(1) A period of stable employment prior to the onset of disability.

(2) Strong motivation to return to the work force.

(3) Successful pursuit of education or training.

(4) Cooperation in treatment of disabling conditions.

(5) Stabilization of medical conditions or substance abuse problems.

(6) Participation in therapeutic work programs.

(7) Evidence of recent sustained job-seeking.

(Authority: 38 U.S.C. 1524(b)(1))

(d) *Contraindications of good potential for employment.* Contraindications of good potential for employment include one or more of the following:

(1) A lifelong history of unstable employment with long periods of employment before the onset of disability.

(2) Being out of the labor market for five years or more preceding the evaluation.

(3) Unsuccessful pursuit of education or training.

(4) Noncooperation in the treatment of disability.

(5) Need for an additional period of medical care or treatment before training would be feasible.

(6) Nonparticipation in prescribed or recommended therapeutic work programs.

(7) Failure of previous vocational rehabilitation programs to achieve employability.

(Authority: 38 U.S.C. 1524(a)(2))

(e) *Negative determinations.* If VA does not find good employment potential, VA will notify the veteran that he or she is not eligible to receive an evaluation. Since this finding will preclude program participation, the veteran will be informed of his or her appellate rights as described in §21.59 of this part.

(1) If the determination cannot be made on the evidence of record, VA shall advise the veteran and may provide him or her with an opportunity to submit additional information within a reasonable time.

(2) A veteran's disagreement with a negative finding shall be considered evidence of motivation for employment, and may, when considered in relation to other information, provide a basis for finding that good employment potential exists;

(3) If the final VA determination, following a review of a contested negative finding, is that good potential for achieving employment does not exist, a personal interview will be scheduled, and the reasons for VA's determination shall be discussed with the veteran.

(Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990]

### §21.6056 Cooperation of the veteran in an evaluation.

(a) *Cooperation of the veteran.* The cooperation of the veteran is essential to a successful evaluation. The purpose of the evaluation and the steps in the process shall be explained to the veteran, and the importance of his or her cooperation shall be stressed. If the veteran does not cooperate in the initiation or completion of the evaluation, the counseling psychologist shall make a reasonable effort through counseling to secure the veteran's cooperation.

(Authority: 38 U.S.C. 1524(a)(3))

(b) *Consequences of noncooperation when evaluation is required.* If the veteran fails to report for or cooperate in a required evaluation and the counseling psychologist has made a reasonable effort to secure his or her participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of §21.364 of this part. If the veteran's case is discontinued under §21.364 of

this part, the Veterans Service Center will be notified. The Veterans Service Center also will be informed if the reason for discontinuance is subsequently removed and the evaluation process is resumed.

(Authority: 38 U.S.C. 1524(a)(1))

(c) *Consequences of noncooperation when evaluation is not required.* If the veteran fails to report for or cooperate in an optional evaluation and the counseling psychologist has made a reasonable effort to secure the veteran's participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364 of this part. The evaluation may be resumed if the reason for the discontinuance is removed and the veteran is otherwise eligible.

(Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 71 FR 28586, May 17, 2006]

**§ 21.6058 Consequences of evaluation.**

(a) *Eligible veteran may choose to participate.* If VA finds, based on the evaluation, that achievement of a vocational goal by the veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs, and shall be set forth in an Individualized Written Rehabilitation Plan (IWRP) under the provisions of § 21.84 of this part or an Individualized Employment Assistance Plan (IEAP) under § 21.88 of this part.

(Authority: 38 U.S.C. 1524(b)(1))

(b) *Veteran ineligible to participate.* A veteran for whom achievement of a vocational goal is not found reasonably feasible shall be notified of this finding and be informed of his or her appellate rights as described in § 21.59 of this part. The veteran shall be provided the assistance described in § 21.50(b)(9) of this part.

(Authority: 38 U.S.C. 1524(b)(1))

**§ 21.6059 Limitations on the number of evaluations.**

(a) *Number of evaluations.* No more than 3,500 evaluations of the reasonable feasibility of achieving a vocational goal may be given during any 12-month period, beginning on February 1, 1985, and each subsequent February 1 during the program period.

(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100–227)

(b) *Cases counted as evaluation.* An evaluation is deemed to be countable against the 3,500 limit permitted during each 12-month period when the following conditions are met:

(1) The veteran is provided one or more personal interviews by a counseling psychologist; and

(2) A determination of the reasonable feasibility of achieving a vocational goal is made by the counseling psychologist.

(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100–227)

(c) *Cases not counted as evaluations.* Computation of the number of evaluations which may be provided in a 12-month period shall exclude cases in which:

(1) The veteran under age 45 awarded pension during the program period is unable to participate for reasons beyond his or her control;

(2) Review of available information does not indicate a good potential for employment of other qualified veterans.

(3) The veteran either fails to keep a scheduled appointment to complete the evaluation or withdraws the claim for an evaluation, or

(4) The veteran who has completed an evaluation requires or requests a reevaluation.

(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100–227, Pub. L. 101–237)

(d) *Priority.* If a veteran below age 45 for whom an evaluation is required cannot be provided an evaluation during a particular 12-month period because of the limitation on the number of evaluations, the veteran will be given first priority for evaluation during the following 12-month period, or

first available subsequent 12-month period, if otherwise eligible.

(Authority: 38 U.S.C. 1524(a)(3), Pub. L. 101–237)

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 56 FR 21448, May 9, 1991]

SERVICES AND ASSISTANCE TO PROGRAM PARTICIPANTS

**§ 21.6060 Services and assistance.**

(a) *General*. VA may provide to program participants:

(1) Vocationally oriented services and assistance of the kind provided veterans under chapter 31, title 38 U.S.C.;

(2) Employment assistance during the 18 month period following completion of a vocational training program, including:

(i) Educational, vocational, psychological, employment and personal adjustment counseling;

(ii) Placement services to effect suitable placement in employment, and post-placement services to attempt to insure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(Authority: 38 U.S.C. 1524(b))

(3) Such other services and assistance of the kind provided veterans under chapter 31, except as provided in paragraph (b) of this section, as are necessary to enable the veteran to prepare for, and participate in, vocational training or employment.

(b) *Services and assistance not provided*. VA will not provide to a participant under this program any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment of the kind provided eligible veterans under 38 U.S.C., chapter 39 or chapter 31;

(4) Training at an institution of higher learning in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board in a special rehabilitation facility for a period in excess of 30 days;

(7) Independent living services, except those which are indispensable to the pursuit of the vocational training program during the period of rehabilitation to the point of employability under § 21.6160 of this part; or

(8) Period of extended evaluation under 38 U.S.C. 3106(e).

(Authority: 38 U.S.C. 1524(b))

DURATION OF TRAINING

**§ 21.6070 Basic duration of a vocational training program.**

(a) *Basic duration of a vocational training program*. The duration of a vocational training program may not exceed 24 calendar months of full-time training except as provided in § 21.6072 of this part.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Responsibility for estimating the duration of a vocational training program*. The counseling psychologist is responsible for estimating the time needed by the veteran to complete a vocational training program. The estimate is made in consultation with the veteran and the vocational rehabilitation specialist during the preparation of the IWRP.

(Authority: 38 U.S.C. 1524(b)(1))

(c) *Duration of training prescribed must meet general requirements for entry into the occupation selected*. The veterans will be provided training for a period sufficient for the veteran to reach the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma or certificate is generally necessary for entry into employment, the veteran may be trained to that level.

(Authority: 38 U.S.C. 1524(b))

(d) *When duration of the training period may be expanded beyond the entry level*. If the amount of training the particular veteran needs in order to qualify for employment in a particular occupation will exceed the amount generally needed for employment in that occupation, VA may provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the area in which the veteran lives or will seek employment exceed those generally needed for employment;

(2) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for a job or business, and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited and additional training will enhance the veteran's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1524(b)(2))

(e) *Estimating the duration of the training period needed.* The counseling psychologist, in estimating duration of the training period needed, must determine that:

(1) The proposed vocational training program must be one which, when pursued full-time by a nondisabled person, would not normally require more than 24 calendar months of pursuit for successful completion;

(2) The program of training and other services needed by the veteran, based upon VA's evaluation, will not exceed 24 calendar months, if training is pursued on a full-time basis, or 36 calendar months if pursued on a less than full-time basis. In making this determination the following criteria will be applied:

(i) The number of actual months and days of the period during which the veteran will pursue the training program will be counted;

(ii) Days of authorized leave and other periods during which the veteran wlll not be pursuing training, such as periods between terms will also be counted;

(iii) The period of evaluation prior to determination of reasonable feasibility will be excluded but the actual number of months and days needed to evaluate and improve rehabilitation potential during the training program will be included;

(iv) The time required, as determined in months and days under paragraph (e)(2)(i) through (iii) of this section, will be the total period that would be required for the veteran to accomplish the vocational program under consideration;

(v) If the total period the veteran requires exceeds 24 calendar months, when pursued on a full-time basis, and an extension of the basic training period may not be approved under § 21.6072 of this part, another suitable vocational goal must be selected for which training can be completed within that period.

(3) If the veteran's vocational training program would require more than 36 calendar months when pursued on a less than full-time basis, the program must be reevaluated to select a vocational goal for which a suitable vocational training program can be completed within that period.

(Authority: 38 U.S.C. 1524(b)(2))

(f) *Effect of change in the vocational goal on duration of training period.* The veteran's vocational goal may be changed during the program in accordance with § 21.94 (a) through (d) of this part. The extent to which such changes may be made is limited by the following considerations:

(1) A change of the vocational goal from one field or occupational family to another field or occupational family may only be approved before the end of the first 24 months of training, whether training is pursued on a full-time or a less than full-time basis; and

(2) A change from one occupational objective to another within the same field or occupational family shall not be considered a change in the vocational goal identified in the veteran's IWRP.

(Authority: 38 U.S.C. 1524(b)(2))

### § 21.6072 Extending the duration of a vocational training program.

(a) *Extension of the duration of a vocational training program.* An extension of a vocational training program as formulated in the IWRP may only be approved to enable the veteran to achieve a vocational goal identified before the

end of the first 24 calendar months of the program.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Maximum number of months for which a program for new participants may be approved.* If a veteran had never participated in this temporary program of vocational training, the originally planned period of training may be extended to a total period consisting of the number of months necessary to attain the vocational goal, but in no case will a program be extended for:

(1) More than 24 calendar months beyond the originally planned period; or

(2) A period which, when added to the originally planned period, totals more than 48 months, as provided in §21.6074(c) of this part.

(Authority: 38 U.S.C. 1524(b))

(c) *Maximum number of months by which a program may be extended for prior participants in the temporary program.* (1) A veteran who has previously participated in this program, but who was not *rehabilitated to the point of employability*, may be provided additional training under this program to complete the prior vocational goal or a different vocational goal, subject to the same provisions as apply to new participants;

(2) If a finding of prior *rehabilitation to the point of employability* is set aside to enable a veteran to pursue a program of on-job training or work experience, including the provision of employer incentives under §21.256 of this part, the number of months for which assistance may be authorized under this program shall be established as provided in §21.256 of this part to the extent consistent with the rules of this section;

(3) If the determination of *rehabilitation to the point of employability* has been set aside under §21.6284 (a) or (b) of this part, additional training may be provided subject to the same provisions as apply to new participants.

(Authority: 38 U.S.C. 1524(b))

(d) *Who may authorize an extension to a vocational training program.* (1) The Vocational Rehabilitation Specialist (VRS) may authorize an extension of up to 3 calendar months of full-time or up to 6 calendar months of less than full-time training to the period of an existing vocational training program, if the VRS determines that the additional time is needed to successfully complete training and the following conditions are met:

(i) The veteran is in *rehabilitation to the point of employability* status under §21.190 of this part;

(ii) The veteran has completed more than half of the prescribed training;

(iii) The veteran is making satisfactory progress;

(iv) The extension is necessary to complete training;

(v) Training can be completed with 3 months of full-time training or not more than 6 calendar months of less than full-time training; and

(vi) The extension plus the original program period will not result in a program of vocational training greater than 36 total calendar months;

(2) The counseling psychologist may approve any other extensions of the vocational training program, except as provided in paragraph (d)(3) of this section, if it is determined that the additional time is needed and the conditions for extension under paragraphs (a) and (b) of this section are met;

(3) The VR&E Officer must also concur in an extension of the vocational training program beyond 24 months when paragraphs (a) through (c) of this section are met.

(Authority: 38 U.S.C. 1524(b)(2))

### §21.6074 Computing the period of vocational training program participation.

(a) *Computing the participation period.* The number of months and days used in a vocational training program shall be computed on the basis of calendar months and days during which the program participant is receiving services under the plan developed in accordance with §21.6080 of this part, whether training is pursued on a full-time or less than full-time basis. Leaves of absence during a period of instruction and periods in which the veteran does not pursue actual training, such as

breaks between periods of instruction, are included.

(Authority: 38 U.S.C. 1524(b))

(b) *Period of employment services separate.* The period during which employment services may be provided pursuant to § 21.6040(b) of this part is not included in computing the period used for vocational training under this program.

(Authority: 38 U.S.C. 1524(b))

(c) *Limitations.* (1) A program participant may receive the services necessary to carry out the vocational training program during a maximum period of 48 months. The 48-month period begins to run on the day the veteran begins to receive the services needed to carry out the vocational training program as specified in the IWRP, and ends 48 months from that date.

(2) Employment services which begin before the end of the 48-month period may be continued for the period specified in the IEAP, or may be provided after the end of the 48 month period if so specified in the IWRP or IEAP, subject to the provisions of § 21.6040(b) of this part.

(Authority: 38 U.S.C. 1524(b)(2), (3))

INDIVIDUALIZED WRITTEN REHABILITATION PLAN

**§ 21.6080 Requirement for an individualized written rehabilitation or employment assistance plan.**

(a) *General.* An Individualized Written Rehabilitation Plan (IWRP) and/or Individualized Employment Assistance Plan (IEAP) will be developed for each program participant for services under 38 U.S.C. 1524. These plans shall be developed in the same manner as for chapter 31 purposes. *See §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), 21.96 and 21.98.*

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Selecting the type of training to include in the plan.* The use of on-job training, including non-pay training, a combination of on-job and institutional training, or institutional training to accomplish the goals of the program should be explored in each case. On-job training, or a combination of on-job and institutional training, should generally be used:

(1) When these options are available;

(2) When these options are as suitable as institutional training for accomplishing the goals of the program; and

(3) The veteran agrees that such training will meet his or her needs.

(Authority: 38 U.S.C. 1524(b))

(c) *Changes in the plan.* Any change amending the duration of a veteran's plan is subject to provisions governing duration of a vocational training program described in § 21.6070 and § 21.6072 of this part.

(Authority: 38 U.S.C. 1524(b)(1))

(d) *Change in the vocational goal after 24 months of training.* If a veteran seeks to change the vocational goal after receipt of 24 months of training and the change is not permitted under § 21.6070(f) of this part, the counseling psychologist shall inform the veteran that:

(1) No change of goal may be authorized but training for the vocational goal previously established may be continued, if it is still reasonably feasible for the veteran to pursue the training under appropriate extensions of the program pursuant to § 21.6072 of this part;

(2) If the veteran elects to terminate the planned vocational training program, he or she shall be provided assistance, to the extent provided under § 21.80(d) of this part, in identifying other resources through which the training desired may be secured;

(3) If the veteran disagrees with the decision, the veteran's case shall be considered under the provisions of § 21.98 of this part.

(Authority: 38 U.S.C. 1524(b)(2))

**§ 21.6082 Completing the plan.**

(a) *Completing the plan.* If the VA determines that the veteran is unable to complete the program within the time limits of the plan after training has begun and the conditions for extension are not met, the long-range vocational

goal of the veteran must be reevaluated, and another vocational goal selected which can be completed within the limits prescribed in §§ 21.6054 and 21.6072 of this part.

(Authority: 38 U.S.C. 1524(b)(1))

(b) *Employment assistance when training is not completed under 38 U.S.C. chapter 15.* A plan for employment assistance may be implemented under § 21.6040(b) of this part even though the veteran's vocational training program has not been, or will not be, completed under this temporary program, provided the other requirements for participation in the program are met.

(Authority: 38 U.S.C. 1524(b)(3))

COUNSELING

**§ 21.6100 Counseling.**

*General.* A veteran requesting or being furnished assistance under this temporary program shall be provided professional counseling services by the Vocational Rehabilitation and Employment (VR&E) Division and other qualified staff as necessary, and in the same manner as such services are provided veterans participating in a chapter 31 program. *See §§ 21.100, 21.380.*

(Authority: 38 U.S.C. 1524(a)(1), (2) and (b)(2))

EDUCATIONAL AND VOCATIONAL TRAINING SERVICES

**§ 21.6120 Educational and vocational training services.**

(a) *Purposes.* Educational and vocational training services are to be provided to a veteran eligible for services and assistance under this temporary program to enable the veteran to:

(1) Become employable in the occupational objective established in an IWRP; and

(2) Receive incidental training necessary to achieve the employment objective established in an IEAP.

(Authority: 38 U.S.C. 1524(b)(1))

(b) *Selection of courses.* VA and the veteran will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment. The educational and training services to be provided include:

(1) Remedial, deficiency and refresher training; and

(2) Training which leads to a vocational objective. All of the forms of program pursuit presented in §§ 21.122 through 21.132 this part may be authorized. Education and training programs in institutions of higher learning are authorized provided the courses are part of a program which is predominantly vocational in content. The program of education and training shall be considered to be predominantly vocational in content if the majority of the instruction offered provides the technical skills and knowledge generally regarded as specific to, and required for, entry into the vocational goal approved for the veteran. Such education and training may generally be authorized at an undergraduate or advanced degree level. However the following are excluded:

(i) An associate degree program in which the content of the majority of the instruction provided is not vocationally oriented;

(ii) The first two years of a 4-year baccalaureate degree program;

(iii) The last two or more years of a 4-year baccalaureate degree program except in degree programs with majors in engineering, teaching, or other similar degree programs with vocational content which ordinarily lead directly to employment in an occupation that is usually available to persons holding such a degree; or

(iv) An advanced degree program, except for a degree program required for entry into the veteran's employment objective, such as a master's degree in social work.

(Authority: 38 U.S.C. 1524(b))

(c) *Charges for education and training services.* The cost of education and training services will be considered in selecting a facility when:

(1) There is more than one facility in the area in which the veteran resides which:

(i) Meets the requirements for approval under §§ 21.290 through 21.299 of this part;

(ii) Can provide the education and training services and other supportive

services specified in the veteran's plan; and

(iii) Is within reasonable commuting distance; or

(2) The veteran wishes to train at a suitable facility in another area, even though training can be provided at a suitable facility in the area in which the veteran resides. See §§ 21.120, 21.370, 21.372.

(Authority: 38 U.S.C. 1524(b)(2)

(d) *Courses not available.* If suitable educational and training courses are not available in the area in which the veteran resides, or if they are available but not accessible to the veteran, other arrangements may be made. Such arrangements may include, but are not limited to:

(1) Relocation of the veteran to another area in which necessary services are available, or

(2) Use of an individual instructor to provide necessary training as provided under § 21.146 of this part.

(Authority: 38 U.S.C. 1524(b))

EVALUATION AND IMPROVEMENT OF REHABILITATION POTENTIAL

### § 21.6140 Evaluation and improvement of rehabilitation potential.

(a) *General.* The services described in paragraph (d) of this section may be used to:

(1) Evaluate rehabilitation potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the veteran's potential for vocational rehabilitation; or

(ii) A vocational training program; and

(3) Reevaluate the vocational training potential of a veteran participating in a rehabilitation program.

(Authority: 38 U.S.C. 1524(a))

(b) *Periods during which evaluation and improvement services may be provided.* Services described in paragraph (d) of this section may be provided during:

(1) An evaluation or reevaluation;

(2) Rehabilitation to the point of employability;

(3) Employment services.

(Authority: 38 U.S.C. 1524(b)(2))

(c) *Duration of services.* The duration of services needed to improve rehabilitation potential, furnished on a full-time basis either as a preliminary part of the period of rehabilitation to the point of employability or as the total program, may not exceed 9 months. If these services are furnished on a less than full-time basis the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training. See § 21.6310.

(Authority: 38 U.S.C. 1524(b)(2))

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Medical care and treatment;

(4) Independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services.

(Authority: 38 U.S.C. 1524(b)(2))

(e) *Applicability of chapter 31 rules.* the provisions of § 21.140 of this part are not applicable to this temporary program. The provisions of §§ 21.142 through 21.156 of this part are applicable, subject to provisions of this section.

(Authority: 38 U.S.C. 1524(b)(2))

INDEPENDENT LIVING SERVICES

### § 21.6160 Independent living services.

(a) *Services must be part of a vocational training program.* Independent living services may be provided as a part of a veteran's IWRP when such services are indispensable to the achievement of the vocational goal, but may not be provided as the sole program of rehabilitation for the veteran, since a vocational training program for the veteran must be found reasonably feasible before the IWRP is prepared.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Independent living services which may be furnished under this program.* The independent living services which may be furnished include:

(1) Training in independent living skills;

(2) Health management programs;

(3) Identification of appropriate housing accommodations; and

(4) Personal care service for a transitional period not to exceed two months.

(Authority: 38 U.S.C. 1524(b))

(c) *Coordination with other VA elements and other Federal, State, and local programs.* Provision of independent living services and assistance will generally require extensive coordination with other VA and non-VA programs. The resources of VA medical centers shall be utilized as prescribed in §21.6242 of this part. If appropriate arrangements cannot be made to provide these services through VA medical centers, other governmental and private nonprofit programs may be used to secure necessary services if the facility or individual providing services meets the requirements of §21.294 of this part.

(Authority: 38 U.S.C. 523, 1524(b))

(d) *Applicability of chapter 31 rules.* Neither §21.160 nor §21.162 of this part are applicable to provision of independent living services under this program.

(Authority: 38 U.S.C. 1524(b))

CASE STATUS SYSTEM

**§21.6180 Case status system.**

(a) *General.* The case status system used in administering benefits under the chapter 31 program, as provided in §§21.180 through 21.198 of this part, will be utilized in a similar manner in this program subject to the provisions of paragraph (b) of this section.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Limitations of applicability of chapter 31 rules.* (1) The provisions of §§21.180(e)(2) and (3), 21.188, and 21.192 of this part are not applicable to this temporary program;

(2) Other incidental references to service-connected disability Chapter 31, *extended evaluation* status, or *independent living* status or other services precluded under §21.6060(b) of this part, found in §§21.180 to 21.198 of this part, are not for application to this temporary program.

(Authority: 38 U.S.C. 1524(b)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 54 FR 8189, Feb. 27, 1989]

SUPPLIES

**§21.6210 Supplies.**

(a) *Purpose of furnishing supplies.* Supplies are furnished to enable a veteran to pursue training, obtain and maintain employment and achieve the goals of his or her program.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Definition.* The term *supplies* includes books, tools and other supplies and equipment which VA determines are necessary for the veteran's vocational training program.

(Authority: 38 U.S.C. 3104(a))

(c) *Periods during which supplies may be furnished.* Supplies may be furnished to a veteran receiving:

(1) An evaluation or reevaluation;

(2) Rehabilitation to the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1524(b)(2))

(d) *Applicability of 38 U.S.C. chapter 31 regulations.* The provisions of §21.210 of this part are not applicable to veterans in this temporary program. The provisions of §§21.212 through 21.224 of this part are applicable to veterans pursuing vocational training and employment under this program in a similar manner as under chapter 31, except the portions thereof noted as follows:

(1) Section 21.216(a)(3) of this part pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) of this part pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(x) of this part pertaining to a veteran discontinued

from an independent living services program.

(Authority: 38 U.S.C. 1524(b)(2))

MEDICAL AND RELATED SERVICES

**§ 21.6240 Medical treatment, care and services.**

(a) *General.* A participant in a vocational training program or receiving employment assistance shall be furnished medical treatment, care and services which VA determines are necessary to develop, carry out and complete the veteran's plan.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Scope of services.* The services which may be furnished include the medical treatment, care and dental services described in part 17 of this chapter. In addition, the following services may be authorized even if not included or described in part 17:

(1) Prosthetic appliances, eyeglasses, and other corrective or assistive devices;

(2) Services to a veteran's family as necessary for the effective rehabilitation of the veteran;

(3) Special services (including services related to blindness and deafness) including:

(i) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(ii) Orientation, adjustment, mobility and related services; and

(iii) Telecommunications, sensory and other technical aids and devices.

(Authority: 38 U.S.C. 1524(b)(2))

(c) *Periods of eligibility.* A veteran is eligible for the services described in paragraph (b) of this section during:

(1) Evaluation;

(2) Rehabilitation to the point employability;

(3) Employment services; and

(4) Other periods, to the extent that services are needed to begin or continue in any of the periods described in paragraphs (c)(1) through (3) of this section. Such periods include, but are not limited to, those when services are needed to facilitate reentry into training following:

(i) Interruption; or

(ii) Discontinuance because of illness or injury.

(Authority: 38 U.S.C. 1524(b)(2))

**§ 21.6242 Resources for provision of medical treatment, care and services.**

(a) *General.* VA medical centers are the primary resources for the provision of medical treatment, care and services for program participants which may be authorized under the provisions of § 21.6240 of this part. The availability of necessary services in VA facilities shall be ascertained in each case.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Hospital care and medical services.* Hospital care and medical services provided to program participants shall only be furnished in facilities over which VA has direct jurisdiction, except as authorized on a contract or fee basis under the provisions of part 17 of this chapter.

(Authority: 38 U.S.C. 1524(b)(2))

CROSS REFERENCES: See § 17.30(1) Hospital care. § 17.30(m) Medical services.

(c) *Provisions of §§ 21.240 and 21.242.* The provisions of §§ 21.240 and 21.242 of this part are not applicable to this temporary program.

(Authority: 38 U.S.C. 1524(b))

FINANCIAL ASSISTANCE

**§ 21.6260 Financial assistance.**

(a) *Direct financial assistance prohibited.* The provisions of §§ 21.260 and 21.264 through 21.276 of this part are not applicable to veterans pursuing training and employment under this temporary program, except as indicated in paragraph (b) of this section.

(Authority: 38 U.S.C. 1524(b)(2)(B)(ii))

(b) *Training costs.* The provisions of § 21.262 of this part pertaining to reimbursement for training costs will be followed to reimburse vendors for servics provided under this temporary program.

(Authority: 38 U.S.C. 1524(d))

ENTERING VOCATIONAL TRAINING

**§ 21.6282 Effective dates of induction into and termination of vocational training.**

(a) *Induction*. Subject to the limitations set forth in § 21.6042 of this part, the date a veteran is inducted into vocational training shall be the earlier of:

(1) The date of the facility requires the veteran to report for prescribed activities; or

(2) The date the program begins at the faciliity providing services.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Termination*. A veteran's training program shall be terminated under the provisions of § 21.6180. of this part.

(Authority: 38 U.S.C. 1524(b)(2))

**§ 21.6284 Reentrance into a training program.**

(a) *Reentrance into rehabilitation to the point of employability following a determination of rehabilitation*. A veteran in a vocational training program under this temporary program who has been found *rehabilitated* under provisions of § 21.196 of this part may be provided an additional period of training or services only if the following conditions are met and the veteran is otherwise eligible.

(1) Current facts, including any relevant medical findings, establish that the veteran's disability has worsened to the extent that he or she is precluded from performing the duties of the occupation for which the veteran previously was found rehabilitated; or

(2) The occupation for which the veteran previously was found rehabilitated under this temporary program is found to be unsuitable.

(Authority: 38 U.S.C. 1524(b)(1))

(b) *Reentrance into rehabilitation to the point of employability during a period of employment services*. A finding of rehabilitation to the point of employability by VA may be set aside during a period of employment services and an additional period of training and related services provided if any of the conditions in paragraph (a) of this section or one of the following conditions are met and the veteran is otherwise eligible:

(1) The services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued training;

(2) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability should not reasonably have been expected at the time the program was originally developed; or

(3) The veteran, because of technological change which occurred subsequent to the declaration of rehabilitation to the point of employability, is no longer able:

(i) To perform the duties of the occupation for which he or she trained, or in a related occupation; or

(ii) To secure employment in the occupation for which he or she trained, or in a related occupation.

(Authority: 38 U.S.C. 1524(b)(3))

[53 FR 4397, Feb. 16, 1988, as amended at 54 FR 8189, Feb. 27, 1989]

**§ 21.6290 Training resources**

(a) *Applicable 38 U.S.C. chapter 31 provisions*. The provisions of §§ 21.290 through 21.299 are applicable to veterans pursuing vocational training and employment under this program in the same manner as under 38 U.S.C. chapter 31, except as specified in paragraph (b).

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Limitations*. The provisions of § 21.294(b)(1)(i) and (ii) of this part pertaining to independent living services are not applicable to this temporary program. The provisions of § 21.294(b)(1)(iii) of this part pertaining to authorization of independent living services as a part of an Individualized Written Rehabilitation Plan (IWRP) are applicable to this temporary program to the extent provided under § 21.6160 of this part.

(Authority: 38 U.S.C. 1524(b)(2))

RATE OF PURSUIT

**§ 21.6310 Rate of pursuit.**

(a) *General requirements.* A veteran should pursue a vocational training program at a rate which is consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances which affect the veteran's ability to pursue training.

(Authority: 38 U.S.C. 1524(b)(1))

(b) *Continuous pursuit.* A veteran should pursue a program of vocational training with as little interruption as necessary, considering the factors described in paragraph (a) of this section.

(Authority: 38 U.S.C. 1524(b)(1))

(c) *Responsibility for determining the rate of pursuit.* VR&E staff, in consultation with the veteran, will determine the rate and continuity of pursuit of training. Consultation with the medical consultant and the Vocational Rehabilitation Panel should be utilized as necessary. This determination will be made in the course of developing the plan, but may be changed later, as necessary to enable the veteran to complete his or her training.

(Authority: 38 U.S.C. 1524(b)(1))

(d) *Measurement of training time used.* The rate of pursuit shall be measured on the basis of the provisions of § 21.310 of this part. A veteran may not pursue training on a less than half-time basis as measured under § 21.310 of this part, except for brief periods, after which training must be resumed on a half-time or greater basis. Brief periods are limited to all or part of a semester, term or quarter, or up to 90 days in a course not conducted on a semester, term, or quarter basis.

(Authority: 38 U.S.C. 1524(b)(1))

(e) *Reduced work tolerance.* The provisions of § 21.312 of this part are not applicable to this temporary program.

(Authority: 38 U.S.C. 1524(b))

(f) *Pursuit of training under special circumstances.* The provisions of § 21.314 of this part are not applicable to this temporary program.

(Authority: 38 U.S.C. 1524(b)(2))

AUTHORIZATION OF SERVICES

**§ 21.6320 Authorization of services under Chapter 31 rules.**

(a) *General.* Sections 21.320 through 21.334 of this part are not applicable to a veteran pursuing a vocational training program except as specified in paragraph (b) of this section.

(Authority: 38 U.S.C. 1524(b)(2))

(b) *Applicable rule.* Section 21.326 of this part pertaining to the beginning and ending dates of a period of employment services is applicable to veterans under this temporary program.

(Authority: 38 U.S.C. 1524(b)(2))

LEAVES OF ABSENCE

**§ 21.6340 Leaves of absence.**

(a) *General.* VA may approve leaves of absence under vertain conditions. During approved leaves of absence, a ceteran shall be considered to be pursuing training for purposes of computing the duration of a vocational training program under §§ 21.6070 through 21.6074. Leave may only be authorized for a veteran during a period of rehabilitation to the point of employability.

(Authority: 38 U.S.C. 1524(b))

(b) *Purpose.* The purpose of the leave system is to enable the veteran to maintain his or her status as an active participant and avoid interruption or discontinuance of training.

(Authority: 38 U.S.C. 1524(b)(2))

(c) *Applicability of chapter 31 rules.* The provisions of § 21.340 of this part are not applicable to this temporary program. The provisions of §§ 21.342

through 21.350 of this part are applicable except for § 21.346 of this part.

(Authority: 38 U.S.C. 1524(b))

SATISFACTORY CONDUCT AND COOPERATION

**§ 21.6362 Satisfactory conduct and cooperation.**

The provisions of §§ 21.362 and 21.364 of this part are applicable to veterans pursuing vocational training under this program in the same manner as under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1524)

TRANSPORTATION SERVICES

**§ 21.6370 Authorization of transportation services.**

(a) *General.* VA shall authorize transportation services necessary for a veteran to pursue a vocational training program under this temporary program. Transportation services include:

(1) Transportation for evaluation, reevaluation or counseling authorized under § 21.376 of this part;

(2) Inter- and intraregional travel which may be authorized under §§ 21.370 (except for (b)(2)(iii)(B)) and 21.372 of this part;

(3) Special transportation allowance authorized under § 21.154 of this part;

(4) Commuting to and from training and seeking employment as authorized under paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1524(b))

(b) *Reimbursement.* Payment of transportation services authorized by VA shall normally be made in arrears and in the same manner as tuition, fees and other services authorized under this program.

(Authority: 38 U.S.C. 1524(b))

(c) *Transportation payment.* A veteran may be reimbursed for the costs of commuting to and from training and seeking employment if he or she requests such assistance and VA determines after careful examination of the veteran's situation, and subject to the limitation contained in paragraph (d) of this section, that the veteran would be unable to pursue training without such assistance. VA may:

(1) Reimburse the facility at which the veteran is training if the facility provides transportation or related services;

(2) Reimburse the veteran for his or her actual commuting expense.

(Authority: 38 U.S.C. 1524(b))

(d) *Limitations.* Payment of commuting expenses may not be made for any period:

(1) Except during the period of training and the first three months of employment services;

(2) When a program participant is employed;

(3) In which a program participant is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs;

(4) In which it becomes feasible for the veteran to commute to school with family, friends or fellow students.

(Authority: 38 U.S.C. 1524(b))

(e) *Amount which may be paid.* VA will reimburse the veteran for his or her actual cost, not to exceed $70 per month. Necessary supportive documentation must be submitted with each request for reimbursement. Payment will be made monthly or at longer intervals as may be agreed to in the IWRP.

(Authority: 38 U.S.C. 1524(b))

(f) *Nonduplication.* A veteran eligible for reimbursement of transportation services under this section and § 21.154 of this part may only receive the benefit provided under § 21.154 of this part.

(Authority: 38 U.S.C. 1524(b))

ADDITIONAL APPLICABLE REGULATIONS

**§ 21.6380 Additional applicable Chapter 31 regulations.**

The following regulations are applicable to veterans pursuing the vocational training under this program in the same manner as they apply to 38 U.S.C. chapter 31: §§ 21.380, 21.390, 21.400, 21.402, 21.412, 21.414 (except (d) and (e)), 21.420, and 21.430 (except (a)) of this part.

(Authority: 38 U.S.C. 1524)

DELEGATION OF AUTHORITY

**§ 21.6410 Delegation of authority.**

(a) *General.* Authority is delegated to the Under Secretary for Benefits and to supervisory or non-supervisory personnel within the jurisdiction of the Vocational Rehabilitation and Employment Service, to make findings and decisions under 38 U.S.C. 1524 and the applicable regulations, precedents and instructions pertaining to this program. See § 2.6(b).

(Authority: 38 U.S.C. 512(a))

(b) *Applicability of §§ 21.412 and 21.414.* The provisions of §§ 21.412 and 21.414 (except for (d) and (e)) are applicable to this temporary program.

(Authority: 38 U.S.C. 512(a))

COORDINATION WITH THE VETERANS SERVICE CENTER

**§ 21.6420 Coordination with the Veterans Service Center.**

It is the responsibility of the VR&E Division to inform the Veterans Service Center in writing of the following changes in the veteran's circumstances contained in the following paragraphs.

(Authority: 38 U.S.C. 1524, Pub. L. 101–237)

(a) *Evaluation.* (1) The date an evaluation being provided a veteran under age 45, who is required to participate in such evaluation, is suspended because of unsatisfactory conduct or cooperation; and

(2) The date the evaluation is resumed.

(Authority: 38 U.S.C. 1524, Pub. L. 101–237)

(b) *Income information.* Any information relating to income from work or training which may affect the veteran's continued entitlement to pension, including participation in:

(1) A work adjustment program, incentive or therapeutic work program, vocational training in a rehabilitation facility, or employment in a rehabilitation facility or sheltered workshop;

(2) On-job training;

(3) The work portion of a cooperative or combination program;

(4) Internships; and

(5) Full- or part-time employment.

(Authority: 38 U.S.C. 1524)

(c) *Dependency changes.* Information regarding dependency changes if the case manager learns of such changes in the normal course of performing his or her duties.

(Authority: 38 U.S.C. 1524)

(d) *Information to determine if the veteran's permanent and total disability rating is protected under § 3.343.* The information provided by the case manager includes:

(1) The employment was within the scope of the vocational goal identified in the veteran's individualized written plan of vocational rehabilitation, or in a related field, and the employment secured by the veteran requires the use of the training or services furnished under the rehabilitation plan.

(2) Employment was secured not later than one year after the date the veteran's eligibility for counseling expired. A veteran's eligibility for counseling expires on the date employment services are terminated by VA or the veteran completes rehabilitation to the point of employability and terminates program participation, whichever is later; and

(3) The veteran maintained his or her employment for 12 consecutive months.

(Authority: 38 U.S.C. 1524, Pub. L. 101–237)

[53 FR 4397, Feb. 16, 1988, as amended at 56 FR 21449, May 9, 1991; 71 FR 28586, May 17, 2006]

## Subpart J—Temporary Program of Vocational Training and Rehabilitation

AUTHORITY: Pub. L. 98–543, sec. 111; 38 U.S.C. 1163; Pub. L. 100–687, sec. 1301, unless otherwise noted.

SOURCE: 51 FR 19333, May 29, 1986, unless otherwise noted. Redesignated at 53 FR 4397, Feb. 16, 1988.

**§ 21.6501 Overview.**

(a) *Purpose.* The temporary program for trial work periods and vocational rehabilitation is intended to test the extent to which a veteran, who has

been awarded a VA compensation rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of service-connected disability, may benefit from vocational rehabilitation services which may be authorized under 33 U.S.C. chapter 31, and 38 U.S.C. 1163. See §§ 3.340 and 3.341 of this title.

(b) *Chapter 31 evaluations*. All veterans participating in this temporary program are to be evaluated to determine whether:

(1) They are eligible for and entitled to receive assistance under chapter 31; and

(2) Achievement of a vocational goal is reasonably feasible.

(Authority: 38 U.S.C. 1163; Pub. L. 100–687)

(c) *Applicability of chapter 31 provisions*. The provisions of §§ 21.1 through 21.430, generally applicable to veterans eligible for benefits under chapter 31, apply except as added to or modified by the provisions of the following sections. Participants not found eligible for chapter 31 benefits may nevertheless receive counseling services under 38 U.S.C. 3104(a)(2) and placement and postplacement services under 38 U.S.C. 3104(a)(5).

(Authority: 38 U.S.C. 1163)

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990]

### § 21.6503 Definitions.

(a) *Program period*. The term *program period* means the period beginning on February 1, 1985, and ending December 31, 1992.

(Authority: 38 U.S.C. 1163(a)(2)(B); Pub. L. 102–291)

(b) *Qualified veteran*. The term *qualified veteran* means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total, but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities. Such a rating is referred to as an IU (individual unemployability) rating. See §§ 3.340, 3.341, and 4.16 of this title.

(c) *Receives an IU rating*. The phrase *receives an IU rating* refers to the date of the rating decision authorizing total disability compensation based upon individual unemployability.

(Authority: 38 U.S.C. 1163(a)(2)(A))

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 58 FR 41637, Aug. 5, 1993]

### § 21.6505 Participation in the temporary program.

Participation in this temporary program of trial work periods and vocational rehabilitation is limited to qualified veterans.

(Authority: 38 U.S.C. 1163(a)(2)(A)).

[55 FR 17272, Apr. 24, 1990]

### § 21.6507 Special benefits for qualified veterans under test program.

(a) *Protection of IU rating under 38 CFR 3.343(c)(2)*. The total disability rating of any qualified veteran who begins to engage in a substantially gainful occupation during the program period is protected from reduction by VA on the basis of the veteran's having secured and followed a substantially gainful occupation under the provisions of § 3.343(c)(2) of this title.

(Authority: 38 U.S.C. 1163(a))

(b) *Counseling and employment services for qualified veterans*. During the program period, VA will make the counseling services described in 38 U.S.C. 3104(a)(2), and the placement and postplacement services described in 38 U.S.C. 3104(a)(5), available to each qualified veteran for whom achievement of a vocational goal is reasonably feasible. These services will be made available regardless of the veteran's entitlement to or desire to participate in a vocational rehabilitation program under chapter 31. See § 21.6519.

(Authority: 38 U.S.C. 1163(b))

### § 21.6509 Notice to qualified veterans.

(a) At the time notice is provided to a qualified veteran of an award of an IU rating, VA shall provide the veteran with an additional statement. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 1163;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing a vocational rehabilitation program under Chapter 31; and

(3) A summary description of the scope of services and assistance available under that chapter.

(Authority: 38 U.S.C. 1163(c)(1))

(b) *Opportunity for evaluation*. After providing the notice required under paragraph (a) of this section, VA shall offer the veteran the opportunity for an evaluation under § 21.50 of this part.

(Authority: 38 U.S.C. 1163(c); Pub. L. 100–687)

(c) *Evaluation*. The term *evaluation* hereinafter shall be understood to mean the same evaluation accorded in an *initial evaluation* and an *extended evaluation* as those terms are described in §§ 21.50 and 21.57 of this part.

(d) *Responsible staff member*. The evaluation or reevaluation will be provided by a counseling psychologist in the Vocational Rehabilitation and Employment (VR&E) Division.

(Authority: 38 U.S.C. 1163(c))

[55 FR 17273, Apr. 24, 1990]

### §§ 21.6511–21.6513 [Reserved]

### § 21.6515 Formulation of rehabilitation plan.

(a) *Formulation of plan*. Following an evaluation, the counseling psychologist will formulate an IWRP (individualized written rehabilitation plan) or an IEAP (individualized employment assistance plan) for each participating qualified veteran for whom achievement of a vocational goal is reasonably feasible. These plans shall be prepared in accordance with § 21.84 (IWRP) or § 21.88 (IEAP).

(b) *Existing plan*. If the veteran already has undertaken a rehabilitation program under Chapter 31, a new plan shall not be developed unless circumstances indicate that the existing plan should be modified or replaced.

(Authority: 38 U.S.C. 1163(c); Pub. L. 100–687)

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, and amended at 55 FR 17272, Apr. 24, 1990]

### § 21.6517 [Reserved]

### § 21.6519 Eligibility of qualified veterans for employment and counseling services.

(a) *General*. A qualified veteran for whom vocational rehabilitation and achievenment of a vocational goal are reasonably feasible may be provided the employment and counseling services to which he or she may be entitled under chapter 31. If the qualified veteran is not eligible for such assistance under chapter 31, he or she may be provided, nevertheless, the counseling, placement and postplacement services provided under 38 U.S.C. 3104(a)(2) and (5). The specific services which may be authorized are discussed in §§ 21.100, 21.252 and 21.254(a).

(b) *Services under other VA and non-VA programs*. Veterans being provided counseling, placement and postplacement services under §§ 21.100, 21.252, and 21.254(a) will also be aided in identifying services of other VA and non-VA programs which may be of assistance in securing employment. All elements of a program of these services shall be incorporated in the IEAP.

(c) *Veteran elects counseling, placement and postplacement services*. If a qualified veteran elects not to undertake the IWRP and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 3104(a)(2) and (5), he or she may be provided those services.

(Authority: 38 U.S.C. 1163(b))

(d) *Duration of services under 38 U.S.C. 3104(a) (2) and (5)*. The services provided under 38 U.S.C. 3104(a)(2) and (5), are limited to an 18-month period of employment assistance as described in § 21.73.

(Authority: 38 U.S.C. 1163(b))

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17273, Apr. 24, 1990]

### § 21.6521 Employment of qualified veterans.

(a) *Provisions of the IEAP (Individualized Employment Assistance Plan).* Each IEAP of a qualified veteran shall require that the:

(1) Case manager maintain close contact with qualified veterans who become employed to help assure adjustment to employment;

(2) Veteran discuss any plan to leave employment during the trial work period with the case manager.

(Authority: 38 U.S.C. 1163(c))

(b) *Coordination with the Veterans Service Center.* The VR&E Division will inform the Veterans Service Center in writing upon employment of the participating qualified veteran during a program of either vocational rehabilitation services or counseling and employment services and when such employment has continued for 12 consecutive months. See § 3.343(c)(2) of this title.

(Authority: 38 U.S.C. 1163(a))

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 71 FR 28587, May 17, 2006]

### § 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 3104(a) (2) and (5).

(a) *Dates of entry.* A qualified veteran, not eligible to receive Chapter 31 benefits, may not enter or pursue a program of counseling and employment services under 38 U.S.C. 3104(a) (2) and (5), before February 1, 1985, or later than December 31, 1992.

(Authority: 38 U.S.C. 1163; Pub. L. 100–687; Pub. L. 102–291)

(b) *Reentry.* The provisions of paragraph (a) of this section are also applicable to veterans being provided additional counseling and employment services following a redetermination of eligibility and entitlement to such services.

(Authority: 38 U.S.C. 1163; Pub. L. 100–687; Pub. L. 102–291)

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17273, Apr. 24, 1990; 58 FR 41637, Aug. 5, 1993]

### § 21.6525 [Reserved]

## Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

AUTHORITY: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

SOURCE: 53 FR 1757, Jan. 22, 1988, unless otherwise noted.

### § 21.7000 Establishment of educational assistance program.

(a) *Establishment.* An educational assistance program for certain veterans and servicemembers is established.

(Authority: 38 U.S.C. 3001(1); Pub. L. 98–525)

(b) *Purpose.* The purpose of this program is as stated in 38 U.S.C. 3001.

(Authority: 38 U.S.C. 3001)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28383, July 11, 1990; 61 FR 26116, May 24, 1996]

DEFINITIONS

### § 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. chapter 30, the following definitions apply.

(a) *Definitions of participants*—(1) *Servicemember.* The term *servicemember* means anyone who:

(i) Meets the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Is on active duty with the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service or National Oceanographic and Atmospheric Administration.

(Authority: 38 U.S.C. 3016; Pub. L. 98–525)

(2) *Veteran.* The term *veteran* means anyone who—

(i) Meets the eligibility requirements of § 21.7042, § 21.7044, or § 21.7045, and

(ii) Is not on active duty. The term *veteran* includes an individual who is

actively participating in the Selected Reserve.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98–525)

(b) *Other definitions*—(1) *Active duty.*

(i) The term *active duty* means—

(A) Full-time duty in the Armed Forces, other than active duty for training,

(B) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service,

(C) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and

(D) Authorized travel to or from such duty or service.

(ii) The term *active duty* does not include any period during which an individual:

(A) Was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,

(B) Served as a cadet or midshipman at one of the service academies, or

(C) Served under the provisions of 10 U.S.C. 511(d) pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(Authority: 38 U.S.C. 101(21), 3002(6); Pub. L. 98–525)

(iii) When referring to individuals who, before November 30, 1989, had never served on active duty (as that term is defined by § 3.6b of this title), the term ''active duty'' when used in this subpart includes full-time National Guard duty first performed after November 29, 1989, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the servicemember's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing or training the National Guard.

(Authority: 38 U.S.C. 3002(7); Pub. L. 101–510, sec. 563(b)) (Nov. 5, 1990)

(iv) When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by § 3.6(b) of this chapter) and who made the election described in § 21.7042(a)(7) or (b)(10), the term *active duty* when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(2) *Attendance* The term *attendance* means the presence of a veteran or servicemember—

(i) In the class where the approved course is being taught in which he or she is enrolled, or

(ii) At a training establishment, or

(iii) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or servicemember is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 3034, 3680(g))

(3) *Audited course.* The term *audited course* has the same meaning as provided in § 21.4200(i) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525)

(4) *Basic educational assistance.* The term *basic educational assistance* means a monetary benefit payable to all individuals who meet basic requirements for eligibility under chapter 30, title 38 U.S.C., for pursuit of a program of education.

(Authority: 38 U.S.C. 3002(1); Pub. L. 98–525)

(5) *Break in service.* (i) Except as provided in paragraph (b)(5)(ii) of this section, the term *break in service* means a period of more than 90 days between the date when an individual is released from active duty or otherwise receives a complete separation from active duty service and the date he or she reenters on active duty.

(ii) A period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians is not a break in service.

(Authority: 38 U.S.C. 3011, 3021)

(6) *Continuous active duty.* (i) The term *continuous active duty* means active duty served without interruption. An interruption in service will only be found when the individual receives a complete separation from active duty.

(ii) A period during which an individual on active duty is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians will not interrupt the continuity of the individual's active duty.

(iii) If an individual, during an obligated period of active-duty service, is separated from active duty to pursue a course of education at a service academy or a post-secondary school preparatory to enrollment at a service academy, no interruption in service will be found and the individual's service will be considered continuous active-duty service, provided he or she—

(A) Commences pursuit of a course of education at a service academy or post-secondary school,

(B) Fails to complete the course of education, and

(C) Immediately reenters on a period of active duty.

(iv) An individual who is discharged or released from active duty for a reason stated in paragraph (b)(6)(iv) of this section after serving not more than 12 months of an obligated period of active duty, and who subsequently reenlists or reenters on a period of active duty, will not be considered to have an interruption in service. Except as provided in paragraph (b)(6)(vi) of this section, the individual's service during the two periods will be considered continuous active-duty service for the aggregate length of the two service periods. However, the individual's discharge or release from the earlier obligated period of service must have been:

(A) For a service-connected disability;

(B) For hardship;

(C) For a medical condition which preexisted such active-duty service and is not service connected;

(D) For a physical or mental condition not characterized as a disability and not resulting from the individual's own willful misconduct which interfered with the individual's performance of duty as determined by the Secretary concerned; or

(E) Involuntary, for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned.

(v) VA will not consider an individual to have an interruption of service when he or she:

(A) Serves a period of active duty without interruption (without a complete separation from active duty), as an enlisted member or warrant officer;

(B) While serving on such active duty is assigned to officer training school; and

(C) Following successful completion of the officer training school is discharged to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.

(vi) If the second period of active-duty service referred to in paragraph (b)(6)(iv) or (b)(6)(v) of this section is of such nature or character that, when aggregated with the earlier period of service referred to in that paragraph, it would cause the individual to be divested of entitlement to educational assistance otherwise established by the earlier period of active duty, the two periods of service will not be aggregated and will not be considered a single period of continuous active duty.

(vii) Time lost will not be considered to interrupt the continuity of service. For the purpose of this section, ''time lost'' includes excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3011, 3012)

(7) *Cost of course.* The term *cost of course* means the total cost for tuition and fees for a course which an educational institution charges to nonveterans whose circumstances are similar to veterans enrolled in the same course. *Cost of course* does not include the cost of supplies which the student

is required to purchase at his or her own expense.

(Authority: 38 U.S.C. 3032; Pub. L. 98–525)

(8) *Deficiency course*. The term *deficiency course* means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 38 U.S.C. 3034; Pub. L. 98–525)

(9) *Dependent*. The term *dependent* means:

(i) A spouse as defined in § 3.50(a) of this chapter,

(ii) A child who meets the requirements of § 3.57 of this chapter, or

(iii) A parent who meets the requirements of § 3.59 of this chapter.

(Authority: 38 U.S.C. 3015(d); Pub. L. 98–525)

(10) *Divisions of the school year*. The term *divisions of the school year* has the same meaning as provided in § 21.4200(b) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525)

(11) *Drop-add period*. The term *drop-add period* has the same meaning as provided in § 21.4200(l) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525)

(12) *Educational assistance*. The term *educational assistance* means basic educational assistance, supplemental educational assistance, and all additional amounts payable, commonly called *kickers*.

(Authority: 38 U.S.C. 3002; Pub. L. 98–525)

(13) *Educational objective*. An educational objective is one that leads to the awarding of a diploma, degree or certificate which reflects educational attainment.

(Authority: 38 U.S.C. 3002(3), 3452(b); Pub. L. 98–525)

(14) *Enrollment*. The term *enrollment* has the same meaning as provided in § 21.4200(n) of this part.

(Authority: 38 U.S.C. 3034, 3680(g); Pub. L. 98–525)

(15) *Enrollment period*. The term *enrollment period* has the same meaning as provided in § 21.4200(p) of this part.

(Authority: 38 U.S.C. 3034, 3680(g); Pub. L. 98–525)

(16) *Holiday vacation*. The term *holiday vacation* means a customary, reasonable vacation period connected with a Federal or State legal holiday which is identified as a holiday vacation in the educational institution's approved literature. Generally, VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98–525)

(17) *In residence on a standard quarter- or semester-hour basis*. The term *in residence on a standard quarter- or semester-hour basis* has the same meaning as provided in § 21.4200(r) of this part.

(Authority: 38 U.S.C. 3034, 3688(c); Pub. L. 98–525)

(18) *Institution of higher learning*. The term *institution of higher learning* has the same meaning as provided in § 21.4200(h) of this part.

(Authority: 38 U.S.C. 3034, 3688; Pub. L. 98–525)

(19) *Mitigating circumstances*. (i) The term *mitigating circumstances* means circumstances beyond the veteran's or servicemember's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the veteran or servicemember,

(B) An illness or death in the veteran's or servicemember's family,

(C) An unavoidable change in the veteran's conditions of employment,

(D) An unavoidable geographical transfer resulting from the veteran's employment,

(E) Immediate family or financial obligations beyond the control of the veteran which require him or her to suspend pursuit of the program of education to obtain employment.

(F) Discontinuance of the course by the educational institution,

(G) Unanticipated active duty for training,

(H) Unanticipated difficulties in caring for the veteran's or eligible person's child or children.

(ii) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the veteran received educational assistance under title 38, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent.

(Authority: 38 U.S.C. 3034, 3680(a)(1); Pub. L. 100–689) (June 1, 1989)

(20) *Nonpunitive grade*. The term *nonpunitive grade* has the same meaning as provided in §21.4200(j) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525)

(21) *Normal commuting distance*. The term *normal commuting distance* has the same meaning as provided in §21.4200(m) of this part.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98–525)

(22) *Professional or vocational objective*. A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, these courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3002(3); Pub. L. 98–525)

(23) *Program of education*. A program of education—

(i) Is any unit course or subject or combination of courses or subjects which is pursued by a veteran or servicemember at an educational institution, and which is required by the Secretary of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution. The combination generally is accepted as necessary to meet requirements for a predetermined educational, professional or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field;

(iii) Includes an approved full-time program of apprenticeship or of other on-job training;

(iv) Effective November 30, 1999, includes a preparatory course for a test that is required or used for admission to—

(A) An institution of higher education; or

(B) A graduate school; and

(v) Includes a licensing or certification test, the passing of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(24) *Punitive grade*. The term *punitive grade* has the same meaning as provided in §21.4200(k) of this part.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525)

(25) *Pursuit*. (i) The term *pursuit* means to work, while enrolled, towards the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria of title 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses (including teacher training courses and similar courses which VA considers to be resident training),

(B) Independent study courses,

(C) Correspondence courses,

(D) An apprenticeship or other on-job training program,

(E) A graduate program of research in absentia,

(F) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses,

(G) A flight training course beginning on or after September 30, 1990, or

(H) A licensing or certification test taken on or after March 1, 2001.

(ii) VA will consider a veteran who qualifies for payment during an interval between terms or school closing, or who qualifies for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(Authority: 38 U.S.C. 3002, 3034, 3452, 3680(g), 3689; Pub. L. 98–525)

(26) *Refresher course*. The term ''refresher course'' means—

(i) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or

(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the period of the individual's active military service.

(Authority: 38 U.S.C. 3034(a))

(27) *Remedial course*. The term *remedial course* means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(Authority: 38 U.S.C. 3034, 38 U.S.C. 3491(a)(2); Pub. L. 98–525)

(28) *Secretary*. The term *Secretary* means the Secretary of Defense with respect to members of the Armed Forces under the jurisdiction of the Secretary of a military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3002(5); Pub. L. 98–525)

(29) *School, educational institution, institution*. The terms *school, educational institution*, and *institution* mean—

(i) Any vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university or scientific or technical institution;

(ii) Any public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma or their equivalents; and

(iii) An entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(30) *School year*. The term *school year* means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 38 U.S.C. 3034; Pub. L. 98–525)

(31) *Selected Reserve*. The term *Selected Reserve* means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b), 10 U.S.C.

(Authority: 38 U.S.C. 3002(4); Pub. L. 98–525)

(32) *Standard class session*. The term *standard class session* has the same meaning as provided in § 21.4200(g) of this part.

(Authority: 38 U.S.C. 3034; 3688(c); Pub. L. 98–525)

(33) *Standard college degree*. The term *standard college degree* has the same meaning as provided in § 21.4200(e) of this part.

(Authority: 38 U.S.C. 3034, 3688; Pub. L. 98–525)

(34) *Supplemental educational assistance*. The term *supplemental educational assistance* means a benefit payable to a

veteran or servicemember as a supplement to his or her basic educational assistance for pursuit of a program of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3002(2); Pub. L. 98–525)

(35) *Established charge*. The term *established charge* means the lesser of—

(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency, or

(ii) The actual cost to the servicemember or veteran.

(Authority: 38 U.S.C. 3034, 3686(a)(1))

(36) *Date of affirmance*. The term *date of affirmance* means the date (after the expiration of ten days after a veteran or servicemember signs an enrollment agreement for a correspondence course), on which the veteran or servicemember signs and submits to VA a written agreement affirming the enrollment agreement.

(Authority: 38 U.S.C. 3034, 3686)

(37) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3002, 3452)

(38) *Disabling effects of chronic alcoholism*. (i) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 100–689) (Nov. 18, 1988)

(39) *Cooperative course*. The term *cooperative course* means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business of industrial establishment being strictly supplemental to the institutional portion.

(Authority: 38 U.S.C. 3002, 3482(a); Pub. L. 100–689) (Jan. 1, 1989)

(40) *Open period*. The term ''open period'' means a period of time beginning on December 1, 1988, and ending on June 30, 1989.

(Authority: 38 U.S.C. 3018; Pub. L. 100–689) (Nov. 18, 1988)

(41) *Persian Gulf War*. The term ''Persian Gulf War'' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33); Pub. L. 102–25)

(42) *Continuously enrolled*. The term *continuously enrolled* means being in an enrolled status at an educational institution for each day during the school year, and for consecutive school years. Continuity of enrollment is not broken by holiday vacations; vacation periods; periods during the school year between terms, quarters, or semesters; or by

nonenrollment during periods of enrollment outside the school year (e.g., summer sessions).

(Authority: Sec. 313(b), Pub. L. 102–568, 106 Stat. 4333)

(43) *Alternative teacher certification program.* The term *alternative teacher certification program,* for the purposes of determining whether an entity offering such a program is a school, educational institution or institution as defined in paragraph (b)(29)(iii) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 38 U.S.C. 3452(c))

(44) *Date of election.* The term *date of election* means:

(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and

(ii) For an election that must be submitted to VA, the date VA receives the written election.

(45) *Institution of higher education.* The term *institution of higher education* means either:

(i) An educational institution, located in a State, that—

(A) Admits as regular students only persons who have a high school diploma, or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the State in which the educational institution is located;

(B) Offers postsecondary level academic instruction that leads to an associate or baccalaureate degree; and

(C) Is empowered by the appropriate State education authority under State law to grant an associate or baccalaureate degree, or where there is no State law to authorize the granting of a degree, is accredited for associate or baccalaureate degree programs by a recognized accrediting agency; or

(ii) An educational institution, not located in a State, that—

(A) Offers a course leading to an undergraduate standard college degree or the equivalent; and

(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.

(Authority: 38 U.S.C. 3002(3))

(46) *Graduate school.* The term *graduate school* means either:

(i) An educational institution, located in a State, that—

(A) Admits as regular students only persons who have a baccalaureate degree or the equivalent in work experience;

(B) Offers postsecondary level academic instruction that leads to a master's degree, doctorate, or professional degree; and

(C) Is empowered by the appropriate State education authority under State law to grant a master's degree, doctorate, or professional degree, or, where there is no State law to authorize the granting of a degree, is accredited for master's degree, doctorate, or professional degree programs by a recognized accrediting agency; or

(ii) An educational institution, not located in a State, that—

(A) Offers a course leading to a master's degree, doctorate, or professional degree; and

(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.

(Authority: 38 U.S.C. 3002(3)).

(47) *High technology industry.* The term *high technology industry* has the same meaning as provided in § 21.4200(aa).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(48) *Employment in a high technology industry. Employment in a high technology* industry has the same meaning as provided in § 21.4200(bb).

(Authority: 38 U.S.C. 3014A)

(49) *High technology occupation.* The term *high technology occupation* has the

same meaning as provided in § 21.4200(cc).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(50) *Computer specialist*. The term *computer specialist* has the same meaning as provided in § 21.4200(dd).

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(51) *Accelerated payment*. An *accelerated payment* is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for an individual's enrollment for a term, quarter, or semester in an approved program of education leading to employment in a high technology industry. In the case of a program of education not offered on a term, quarter, or semester basis, the accelerated payment is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for the entire such program.

(Authority: 38 U.S.C. 3014A)

(52) *Certification test*. The term *certification test* means a test that an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(53) *Licensing test*. The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(54) *Organization or entity offering a licensing or certification test*. (i) The term *organization or entity offering a licensing or certification test* means:

(A) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(B) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(C) An organization or entity that administers a certification test for the organization or entity that will issue a certificate to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(ii) This term does not include:

(A) An organization or entity that develops and/or proctors a licensing or certification test, but does not issue the license or certificate; or

(B) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(55) *Tuition assistance top-up*. The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

(56) *Fugitive felon*. The term *fugitive felon* has the same meaning as provided in § 21.4200(kk).

(Authority: 38 U.S.C. 5313B)

(57) *Felony*. The term *felony* has the same meaning as provided in § 21.4200(ll).

(Authority: 38 U.S.C. 5313B)

(58) *Transferor*. The term *transferor* means an individual, who is—

(i) Entitled to educational assistance under the Montgomery GI Bill—Active Duty program based on his or her own active duty service; and

(ii) Approved by the service department to transfer a portion of his or her entitlement to his or her dependent or dependents.

(Authority: 38 U.S.C. 3020)

(59) *Transferee*. The term *transferee* means an individual to whom entitlement has been transferred.

(Authority: 38 U.S.C. 3020)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28383, July 11, 1990; 56 FR 20130, May 2, 1991; 57 FR 15023, Apr. 24, 1992; 58 FR 26241, May 3, 1993; 59 FR 24051, May 10, 1994; 61 FR 6785, Feb. 22, 1996; 61 FR 29297, June 10, 1996; 62 FR 55761, Oct. 28, 1997; 64 FR 23772, May 4, 1999; 65 FR 5786, Feb. 7, 2000; 65 FR 67266, Nov. 9, 2000; 66 FR 39279, July 30, 2001; 68 FR 34328, June 9, 2003; 68 FR 35179, June 12, 2003; 70 FR 25787, May 16, 2005; 71 FR 75674, Dec. 18, 2006; 72 FR 16979, Apr. 5, 2007]

CLAIMS AND APPLICATIONS

### § 21.7030 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 38 U.S.C. chapter 30, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471, 5101, 5102, 5103)

[64 FR 23773, May 4, 1999]

### § 21.7032 Time limits for making elections.

(a) *Scope of this section*. The provisions of this section are applicable to certain elections to receive educational assistance under 38 U.S.C. ch. 30. For time limits governing formal and informal claims for educational assistance under 38 U.S.C. ch. 30, see § 21.1033.

(Authority: 38 U.S.C. 3018B)

(b) *Time limit for completing certain elections*. An individual who seeks to establish eligibility to receive educational assistance under § 21.7045 must—

(1) Within one year of the date of the VA letter or other written notice to the individual indicating that additional evidence is needed in order to complete the claim, submit that evidence to VA. This time limit may be extended if the individual is able to show good cause for an extension of the period to the date on which he or she actually submits the additional evidence; and

(2) Submit the $1,200 VA is required pursuant to § 21.7045(c)(2) to collect before educational assistance can be awarded. A delay in submitting the $1,200 may result in a later effective date for the award to the individual, and in no event will VA accept payment of the $1,200 from the individual after the last date of eligibility as determined by § 21.7050 or § 21.7051. See § 21.7131(l).

(Authority: 38 U.S.C. 3018B)

[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 11671, Mar. 20, 1991; 58 FR 63530, Dec. 2, 1993; 61 FR 6785, Feb. 22, 1996; 64 FR 23773, May 4, 1999; 72 FR 16980, Apr. 5, 2007]

ELIGIBILITY

### § 21.7040 Categories of basic eligibility.

Eligibility for basic educational assistance can be established by:

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and

(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98–525)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990]

### § 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044, or § 21.7045 in order to be eligible for basic educational assistance. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether

an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in §3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018(b), 3018A)

(a) *Eligibility based solely on active duty*. An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions and requirements.

(1) The individual must after June 30, 1985, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) Except as provided in paragraph (a)(5) of this section, the individual must—

(i) If his or her obligated period of active duty is three years or more, serve at least three years of continuous active duty in the Armed Forces; or

(ii) If his or her obligated period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;

(3) The individual, before applying for educational assistance, must either—

(i) Complete the requirements of a secondary school diploma (or an equivalency certificate), or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree; and

(Authority: 38 U.S.C. 3011, 3016)

(4) After completing the service requirements of this paragraph the individual must—

(i) Continue on active duty, or

(ii) Be discharged from service with an honorable discharge, or

(iii) Be released after service on active duty characterized by the Secretary concerned as honorable service, and

(A) Be placed on the retired list, or

(B) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(C) Be placed on the temporary disability retired list, or

(iv) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(5) An individual who does not meet the requirements of paragraph (a)(2) of this section is eligible for basic educational assistance when he or she is discharged or released from active duty—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted service on active duty and which VA determines is not service connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government—

(A) After completing at least 20 continuous months of active duty of an obligated period of active duty that is less than three years, or

(B) After completing 30 continuous months of active duty of an obligated period of active duty that is at least three years, or

(v) Involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011)

(6) An individual whose active duty meets the definition of that term found in §21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so

before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

(b) *Eligibility based on active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must, after June 30, 1985, either—

(i) First become a member of the Armed Forces, or

(ii) First enter on active duty as a member of the Armed Forces;

(2) The individual, before applying for educational assistance, must either—

(i) Complete the requirements of a high school diploma (or an equivalency certificate),

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(Authority: 38 U.S.C. 3011, 3012, 3016)

(3) Except as provided in paragraph (b)(6) of this section, the individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(7) of this section, after completion of active duty service, the individual must serve at least four continuous years of service in the Selected Reserve. An individual whose release from active duty service occurs after December 17, 1989, must begin this service in the Selected Reserve within one year from the date of his or her release from active duty. During this period of service in the Selected Reserve the individual must satisfactorily participate in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 3012(a)(1); Pub. L. 100–689, Pub. L. 101–237)

(5) The individual must, after completion of all service described in this paragraph

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when the individual is discharged or released from the Armed Forces during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) In the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, or

(v) Involuntarily, for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when

it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(7) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty service required by this paragraph the individual serves a continuous period of service in the Selected Reserve and is discharged or released from service in the Selected Reserve—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) After a minimum of 30 months of such service for the convenience of the Government, or

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in subparagraph (b)(4) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability;

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected; or

(C) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012(b)(1)(B)(i))

(iii) Before completing four years service in the Selected Reserve, the individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four-year service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16133(b)(1); 38 U.S.C. 3012(b)(1)(B); sec. 4421(b) and (c), Pub. L. 102–484, 106 Stat. 2718)

(8) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time

during which the individual is considered to have continuous service in the Selected Reserve even though he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(8)(i) of this section.

(9) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b)(8) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98–525, Pub. L. 100–689) (July 1, 1985, Oct. 1, 1987)

(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

(c) *Eligibility based on withdrawal of election not to enroll.* As stated in paragraph (f) of this section, a veteran or servicemember who elects not to enroll in this educational assistance program is generally not eligible for educational assistance. However, such a person may establish eligibility by meeting the requirements of this paragraph.

(1) The individual must withdraw an election not to enroll. Only someone who meets the provisions of this subparagraph may make this withdrawal. Such a withdrawal is irrevocable. The withdrawal may only be made during the period beginning on December 1, 1988, and ending on June 30, 1989, by a servicemember who—

(i) Must have first become a member of the Armed Forces or first entered on active duty as a member of the Armed Forces during the period beginning July 1, 1985, and ending June 30, 1988;

(ii) As of the day of withdrawal of the election must have served continuously on active duty without a break in service since the date the individual first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces;

(iii) Must be serving on active duty on the day he or she withdraws the election;

(iv) Withdraws the election in the form prescribed by the Secretary of Defense or in the case of the Coast Guard by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) The individual must continue to serve the period of service that the individual was obligated to serve on December 1, 1988.

(3) The individual must:

(i) Complete the period of service that he or she was obligated to serve on December 1, 1988, which will include completion of a period of extension or reenlistment if an individual's initial obligated period of service was scheduled to end after November 30, 1988, but he or she extended an enlistment or reenlisted before December 1, 1988; or

(ii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been discharged or released from active duty for—

(A) A service-connected disability, or

(B) A medical condition which preexisted that period of service and which the Secretary determines is not service connected, or

(C) Hardship (10 U.S.C. 1173); or

(iii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been—

(A) Discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service if such period was less than three years, or 30 months, if that period was at least three years;

(B) Involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned in accordance

with regulations prescribed by the Secretary of Defense; or

(C) Discharged or released from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense (or by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service of the Navy).

(4) Before applying for educational assistance, the individual—

(i) Must complete the requirements of a secondary school diploma (or an equivalency certificate) or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(5) Upon completion of the period of service he or she was obligated to serve on December 1, 1988, the individual must—

(i) Be discharged from service with an honorable discharge, be placed on the retired list, be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or be placed on the temporary disability retired list; or

(ii) Continue on active duty; or

(iii) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 3018; Pub. L. 102–16) (Mar. 22, 1991)

(d) *Dual eligibility*. (1) An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligibility established under paragraph (a) of this section.

(2) An individual must elect, in writing, whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual:

(A) Is a veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section; and

(B) Also is a reservist who has established eligibility for benefits under 10 U.S.C. chapter 1606 through meeting the requirements of §21.7540; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505.

(3) An election under this paragraph (d) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the veteran either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(4) If a veteran is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (d)(1) through (d)(3) of this section.

(Authority: 10 U.S.C. 16132, 38 U.S.C. 3033(c))

(e) *Eligibility to receive educational assistance while serving a qualifying period of active duty*. (1) An individual on active duty who does not have sufficient active duty service to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she

(i) After June 30, 1985, either—

(A) First becomes a member of the Armed Forces, or

(B) First enters on active duty as a member of the Armed Forces;

(ii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning training;

(iii) Serves at least two years of continuous active duty in the Armed Forces; and

(iv) Remains on active duty.

(2) Subject to paragraph (e)(3) of this section, VA will consider an individual to have met the requirements of paragraph (b) of this section when he or she—

(i) Has met the active duty requirements of paragraph (b) of this section;

(ii) Is committed to serve 4 years in the Selected Reserve; and

(iii) Before beginning the training for which he or she wishes to receive educational assistance—

(A) Has completed the requirements of a high school diploma (or equivalency certificate), or

(B) Has successfully completed the equivalent of 12 semester hours or the equivalent in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3011, 3012, 3016)

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(Authority: 38 U.S.C. 3011, 3012, 3016; Pub. L. 98–525)

(f) *Restrictions on establishing eligibility*. (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section or in § 21.7045(b) or (c) of this part.

(Authority: 38 U.S.C. 3018, 3018A; Pub. L. 100–689, Pub. L. 101–510) (Nov. 5, 1990)

(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon graduation from:

(i) The United States Military Academy;

(ii) The United States Naval Academy;

(iii) The United States Air Force Academy; or

(iv) The United States Coast Guard Academy.

(3) Except as provided in this paragraph and in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Senior Reserve Officers' Training Corps program) is not eligible for educational assistance under 38 U.S.C. chapter 30. This bar to eligibility under 38 U.S.C. chapter 30 does not apply to an individual who entered active duty after September 30, 1996, and received—

(i) $2,000 or less in educational assistance under 10 U.S.C. 2107 for at least one year of the individual's participation in that program of educational assistance; or

(ii) $3,400 or less in educational assistance under 10 U.S.C. 2107 for at least one year of the individual's participation in that program of educational assistance. This provision applies to payment of educational assistance under 38 U.S.C. chapter 30 for months after December 31, 2001.

(Authority: 38 U.S.C. 3011(c), 3012(d))

(4) Paragraphs (f)(2) and (f)(3) of this section do not apply to a veteran who has met the requirements for educational assistance under paragraph (a), (b) or (c) of this section before receiving a commission in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the

United States Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Senior Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

(g) *Reduction in basic pay.* (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

(2) The basic pay of an individual who withdraws an election not to receive educational assistance under 38 U.S.C. ch. 30 as described in paragraph (c) of this section shall be reduced by

(i) $1,200, or

(ii) In the case of an individual whose discharge or release from active duty prevents the reduction of the individual's basic pay by $1,200, an amount less than $1,200.

(3) The basic pay of any individual who makes the election described in paragraph (e)(1) of this section and who does not withdraw that election will not be subject to the reduction described in either paragraph (g)(1) or paragraph (g)(2) of this section.

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

(5) If through administrative error, or other reason—

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

(Authority: 38 U.S.C. 3002, 3011, 3012, 3018)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0594)

[53 FR 1757, Jan. 22, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.7042, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### § 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

Certain individuals with 38 U.S.C. chapter 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. chapter 30. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the

individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for periods of time specified in § 3.15.

(a) *Eligibility based solely on active duty*. An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions, and requirements—

(1) The individual must have met the requirements of 38 U.S.C. chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. chapter 34;

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(4) After June 30, 1985—

(i) The individual must serve at least three years continuous active duty in the Armed Forces, or

(ii) The individual must be discharged or released from active duty—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (Hardship discharge), or

(D) For the convenience of the Government provided the individual completes at least 30 months of active duty, or

(E) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy;

(5) Upon completion of the requisite active duty service the individual must either—

(i) Continue on active duty, or

(ii) Be discharged from active duty with an honorable discharge, or

(iii) Be released after service on active duty characterized by the Secretary concerned as honorable service and

(A) Be placed on the retired list, or

(B) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(C) Be placed on the temporary disability retired list, or

(iv) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service; and

(6) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service; or

(Authority: 38 U.S.C. 3011)

(7) Effective December 27, 2001, an individual must meet the following requirements. He or she—

(i) Was not on active duty on October 19, 1984;

(ii) Reenlists or reenters on a period of active duty after October 19, 1984; and

(iii) Serves at least three years of continuous active duty in the Armed

Forces after June 30, 1985. The individual is not required to serve three years if he or she is honorably discharged or released from active duty for one of the reasons shown in paragraphs (a)(4)(ii)(A) through (a)(4)(ii)(F) of this section.

(Authority: 38 U.S.C. 3011(a)(1))

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.* An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must have met the requirements of 38 U.S.C. chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. chapter 34;

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(4) The individual either—

(i) Must have been on active duty on October 19, 1984, must have served without a break in service from October 19, 1984, through June 30, 1985, and after June 30, 1985—

(A) Except as provided in paragraph (b)(5) of this section, must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and

(B) Except as provided in paragraph (b)(6) of this section, after completion of this active duty service, must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned; or

(ii) Effective December 27, 2001, must not have been on active duty on October 19, 1984, must reenlist or reenter on a period of active duty after October 19, 1984, and after June 30, 1985—

(A) Except as provided in paragraph (b)(5) of this section, must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and

(B) Except as provided in paragraph (b)(6) of this section, after completion of this active duty service, must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 3012(a)(1))

(5) The individual also must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or

(iv) Continue on active duty, or

(v) Continue in the Selected Reserve.

(6) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when he or she is discharged or released during those two years—

(i) For a service-connected disability, or

(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service-connected, or

(iii) Under 10 U.S.C. 1173 (hardship discharge), or

(iv) For convenience of the government provided the individual completes at least 20 months of active duty, or

(v) Involuntarily, for the convenience of the government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a

disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(7) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when—

(i) After completion of the active duty required by this paragraph he or she serves a continuous period of service in the Selected Reserve, and

(A) Is discharged for a service-connected disability, or

(B) Is discharged for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or

(C) Is discharged for hardship, or

(D) Is discharged or released after a minimum of 30 months service in the Selected Reserve for convenience of the Government, or

(E) Is discharged involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) Is discharged for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in paragraph (b)(4) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected, or

(iii) Before completing four years service in the Selected Reserve the individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four years service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16133(b)(1); sec. 4421(b) and (c), Pub. L. 102–484, 106 Stat. 2718)

(8) A veteran who has completed the active duty service required by this paragraph and has made a commitment (as determined by the Secretary concerned) to serve four continuous years in the Selected Reserve may pursue a program of education with basic educational assistance while performing the required Selected Reserve service.

(9) For the purpose of determining continuity of Selected Reserve service,

the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even through he or she—

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or

(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in subdivision (i) of this subparagraph.

(10) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (8) or (9) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3011, 3012, 3016; Pub. L. 98–525, Pub. L. 100–689) (July 1, 1985)

(11) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service.

(Authority: 38 U.S.C. 3012(a)(1)(B))

(c) *Restrictions on establishing eligibility*. Except as provided in paragraph (d) of this section, an individual, who would otherwise be eligible for educational assistance under paragraphs (a) or (b) of this section, is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces—

(1) Upon graduation from—

(i) The United States Military Academy, or

(ii) The United States Naval Academy, or

(iii) The United States Air Force Academy, or

(iv) The Coast Guard Academy; or

(2) Upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98–525)

(d) *Exception to restrictions on establishing eligibility*. Paragraph (c) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a) or (b) of this section before receiving a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990; 56 FR 20132, May 2, 1991; 57 FR 29026, June 30, 1992; 59 FR 24050, 24051, May 10, 1994; 61 FR 6786, Feb. 22, 1996; 61 FR 26116, May 24, 1996; 62 FR 55761, Oct. 28, 1997; 65 FR 20745, Apr. 18, 2000; 65 FR 67266, Nov. 9, 2000; 68 FR 34329, June 9, 2003; 73 FR 2427, Jan. 15, 2008]

### § 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in this subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) or (e) of this section.

(a) *Service requirements*. The individual must meet one of the following sets of service requirements.

(1) The individual—

(i) If not a member of the Coast Guard, must be on active duty or full-time National Guard duty either on September 30, 1990, or after November 29, 1993, or if a member of the Coast Guard, must be on active duty after September 30, 1994, and

(ii) After February 2, 1991, must be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge; or

(2) The individual must—

(i) Be separated from active military, naval, or air service with an honorable discharge, and

(ii) Receive voluntary separation incentives under 10 U.S.C. 1174a or 1175.

(Authority: 10 U.S.C. 1141; 38 U.S.C. 3018A)

(b) *Additional requirements for those individuals voluntarily separated after October 23, 1992, or involuntarily separated.* An individual who meets the requirements of paragraph (a)(1) of this section; or an individual who meets the requirements of paragraph (a)(2) of this section and who either was not a member of the Coast Guard and was separated after October 22, 1992, or who was a member of the Coast Guard and was separated after September 30, 1994, must meet the following additional requirements in order to establish eligibility for educational assistance:

(1) *Required election.* (i) If, under § 21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the election must be made:

(A) Before the involuntary or voluntary separation as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; and

(ii) If the individual is a participant (as defined in § 21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before the individual is involuntarily or voluntarily separated as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; or

(iii) If the individual is not described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before the individual is involuntarily or voluntarily separated as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) *Reduction in basic pay.* The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b)(1) of this section is required by 38 U.S.C. 3018B to be reduced by $1,200.

(i) If for any reason the basic pay of an individual who received an involuntary separation is not so reduced by $1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(ii) If the individual is voluntarily separated, such reduction of the individual's basic pay by $1,200 is a precondition to establishing eligibility. Hence, educational assistance under 38 U.S.C. ch. 30 may not be paid to such an individual when the reduction does not occur.

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance is denied due to failure to meet the requirements of paragraph (b)(3)(i) of this section at the time of his or her application for educational assistance, the veteran may

reapply if the requirements are subsequently met.

(Authority: 38 U.S.C. 3018B)

(c) *Additional requirements for individuals who are voluntarily discharged before October 23, 1992.* If an individual meets the requirements of paragraph (a)(2) of this section and is voluntarily discharged before October 23, 1992, he or she must also meet the following requirements in order to establish eligibility for educational assistance.

(1) *Required election.* (i) If, under § 21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the new election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs; and

(ii) If the individual is a participant (as defined in § 21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(iii) If the individual is not described in either paragraph (c)(1)(i) or (ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(2) *$1,200 collection.* VA must collect $1,200 from the individual before awarding educational assistance under 38 U.S.C. ch. 30. Collection of $1,200 is a precondition to establishing eligibility.

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance under subpart K of this part is denied due to failure to meet the requirements of paragraph (c)(3)(i) of this section at the time of his or her application for educational assistance, the veteran will be permitted to apply at a later date.

(Authority: 38 U.S.C. 3018B)

(d) *Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program—* (1) *Making an election.* To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must—

(i) Have elected to do so before October 9, 1997;

(ii) Have been a participant (as that term is defined in § 21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;

(iii) Have been on active duty on October 9, 1996; and

(iv) Receive an honorable discharge.

(2) *Election.* The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) *$1,200 collection.* An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from

the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C)

(e) *Alternate eligibility requirements for former participants in the Post-Vietnam Era Veterans' Educational Assistance Program*—(1) *Definition.* For the purpose of this paragraph a *participant* is a veteran or servicemember who:

(i) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, contributed to the fund described in § 21.5021(f), and either—

(A) Is making contributions by monthly payroll deduction to that fund;

(B) Has some or all of the contributions remaining in that fund;

(C) Has disenrolled, and received a refund of contributions; or

(D) Has used all of his or her entitlement to benefits under the Post-Vietnam Era Veterans' Educational Assistance Program; or

(ii) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, and has had the Secretary of Defense make contributions to the fund described in § 21.5021(f) for him or her.

(2) *Making an election.* To receive educational assistance under authority of this paragraph, a veteran or servicemember must:

(i) Have elected before November 1, 2001, to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program;

(ii) Have been a participant in the Post-Vietnam Era Veterans' Educational Assistance Program on or before October 9, 1996;

(iii) Have served continuously on active duty since October 9, 1996, through at least April 1, 2000;

(iv) Receive an honorable discharge when discharged or released from the period of active duty during which the servicemember made the election described in paragraph (e)(3) of this section.

(3) *Election.* The election to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before November 1, 2001, pursuant to procedures provided by the Secretary of the military department concerned.

(4) *$2,700 collection.* (i) An individual who has made the election described in paragraph (e)(3) of this section must have his or her basic pay reduced by $2,700 in a manner prescribed by the Secretary of the military department concerned. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, the Secretary of the military department concerned will collect from the individual an amount equal to the difference between $2,700 and the amount that the individual's basic pay has been reduced. The individual may choose how the $2,700 is to be collected. The Secretary of the military department concerned, according to the choice the individual makes, will collect this amount—

(A) From the individual; or

(B) By reducing the individual's retired or retainer pay.

(ii) The individual must pay $2,700 to the Secretary of the military department concerned, as provided for by that Secretary, during an 18-month period beginning on the date the individual made the election described in paragraph (e)(3) of this section.

(iii) Educational assistance under authority of paragraph (e) of this section to an individual who was discharged or released from active duty before the Secretary of the military department concerned had collected the full $2,700 described in paragraph (e)(4) of this

section is not payable until that Secretary either—

(A) Collects in full the $2,700; or

(B) Has made the first reduction in retired or retainer pay for the purpose of the $2,700 payment described in paragraph (e)(4) of this section. Thus, a veteran who is making the $2,700 payment through having retired or retainer pay reduced may be eligible before the Secretary of the military department concerned collects the full $2,700.

(5) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C(e))

[61 FR 6786, Feb. 22, 1996, as amended at 61 FR 29297, June 10, 1996; 65 FR 5787, Feb. 7, 2000; 65 FR 20745, Apr. 18, 2000; 68 FR 34329, June 9, 2003]

### § 21.7046 Eligibility for supplemental educational assistance.

The Secretary concerned, pursuant to regulations prescribed by that Secretary, has the discretion to provide for the payment of supplemental educational assistance to certain veterans and servicemembers eligible for basic educational assistance.

(a) *Service requirements: eligibility based only on active duty service.* The Secretary concerned may authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part based solely on active duty service only if the individual meets the provisions of this paragraph.

(1) An individual may establish eligibility for supplemental educational assistance by serving five or more consecutive years of active duty in the Armed Forces in addition to the years counted to qualify the individual for basic educational assistance without a break in any such service.

(2) After completion of the service described in paragraph (a)(1) of this section the individual must either—

(i) Continue on active duty without a break,

(ii) Be discharged from service with an honorable discharge,

(iii) Be placed on the retired list,

(iv) Be transferred to the Fleet Reserve or the Fleet Marine Corps Reserve,

(v) Be placed on the temporary disability retired list, or

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 3021(a); Pub. L. 98–525)

(b) *Service requirements: eligibility based on service in the Selected Reserve.* The Secretary concerned (pursuant to regulations which he or she may prescribe) has the discretion to authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part through consideration of additional active duty service and additional service in the Selected Reserve only if the individual meets the provisions of this paragraph.

(1) The individual must serve—

(i) Two or more consecutive years of active duty in the Armed Forces in addition to the years on active duty counted to qualify the individual for basic educational assistance, and

(ii) Four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for basic educational assistance.

(2) The individual after completion of the service described in paragraph (b)(1) must—

(i) Be discharged from service with an honorable discharge, or

(ii) Be placed on the retired list, or

(iii) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or

(iv) Be placed on the temporary disability retired list, or

(v) Continue on active duty, or

(vi) Continue in the Selected Reserve.

(3) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy.

(4) The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is not attached to a unit of the Selected Reserve for any reason (also to be prescribed by the Secretary concerned by regulation) other than those stated in paragraph (b)(3) of this section.

(5) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (3) or (4) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3021(a); Pub. L. 98–525)

### § 21.7050 Ending dates of eligibility.

The ending date of eligibility will be determined as follows:

(a) *Ten-year time limitation.* (1) Except as provided in paragraphs (c), (d), and (e) of this section and in § 21.7051, VA will not provide basic educational assistance or supplemental educational assistance to a veteran or servicemember beyond 10 years from the later of—

(i) The date of the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service;

(ii) The date of the veteran's last discharge or release from a shorter period of active duty if the discharge or release is—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted such service and which VA determines is not service-connected, or

(C) For hardship, or

(D) Involuntary, for the convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned, in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy;

(iii) The date on which the veteran meets the requirement for four years service in the Selected Reserve found in §§ 21.7042(b) and 21.7044(b); or

(iv) December 27, 2001, for individuals who become eligible for educational assistance under § 21.7044(a)(7) or (b)(4)(ii).

(Authority: 38 U.S.C. 3031(a), (e), (g))

(2) In determining whether a veteran was discharged or released from active duty for a medical condition which preexisted that active duty, VA will be bound by a decision made by a competent military authority.

(Authority: 38 U.S.C. 3031(a), 3031(g))

(b) *Reduction of ten-year eligibility period.* (1) Except as provided in paragraph (b)(2) of this section, a veteran who had eligibility for educational assistance under 38 U.S.C. ch. 34 and who is eligible for educational assistance under 38 U.S.C. ch. 30 as provided in § 21.7044 of this part shall have his or her ten-year period of eligibility reduced by the number of days he or she was not on active duty during the period beginning on January 1, 1977, and ending on June 30, 1985.

(2) A veteran's ten-year period of eligibility shall not be reduced by any period in 1977 before the veteran began serving on active duty when the veteran qualified for educational assistance under 38 U.S.C. ch. 34 through service on active duty which—

(i) Commenced within 12 months of January 1, 1977, and

(ii) Resulted from a contract with the Armed Forces in a program such as the DEP (Delayed Enlistment Program) or an ROTC (Reserve Officers' Training Corps) program for which a person enlisted in, or was assigned to, a reserve component before January 1, 1977.

(Authority: 3031(e))

(c) *Time limit for some members of the Army and Air National Guard.* (1) If a veteran or servicemember establishes

eligibility for the educational assistance payable under this subpart by making the election described in §21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in §21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in §21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

(d) *Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer*. If a veteran would not be eligible but for the provisions of §21.7020(b)(6)(v), VA will not pay basic educational assistance or supplemental educational assistance to that veteran beyond 10 years after the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service, or November 30, 2009, whichever is later.

(Authority: 38 U.S.C. 3011(f), 3031(a))

(e) *Some veterans have a later ending date*. (1) The ending date of the eligibility period of a veteran described in paragraph (e)(2) of this section is the later of:

(i) November 1, 2010; or

(ii) 10 years after the date of the veteran's last discharge from a period of active duty of 90 days or more.

(2) The ending date of a veteran's eligibility period will be the date described in paragraph (e)(1) of this section if the veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (e)(2)(i) through (e)(2)(iv) of this section and the veteran is enabled to establish eligibility by the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(i) *A period of active duty other than the initial period was used to establish eligibility*. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance;

(ii) *High school education eligibility criterion met after the qualifying period of active duty*. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(iii) *High school education eligibility criterion met after October 29, 1994*. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance;

(iv) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990*. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility for educational assistance, the veteran must before January 1, 1990, meet the requirements

for a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3031 note; secs. 102(e), 103(e), Pub. L. 106–419, 114 Stat. 1825; 1826–27)

(f) *Correction of military records.* A veteran may become eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by competent military authority. When this occurs, the VA will not provide educational assistance later than 10 years from the date his or her dismissal or discharge was changed, corrected or modified (except as provided in § 21.7051 of this part).

(Authority: 38 U.S.C. 3031(e))

(g) *Periods excluded.* VA will not include in computing the 10-year period of eligibility for educational assistance under this section, any period during which the veteran after his or her last discharge or release from active duty—

(1) Was captured and held as a prisoner of war by a foreign government or power, or

(2) Immediately following the veteran's release from this detention during which he or she was hospitalized at a military, civilian or VA medical facility.

(Authority: 38 U.S.C. 3031(c); Pub. L. 98–525)

(h) *Time limitation for a spouse eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a spouse, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(i) *Time limitation for a child eligible for transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080 is the earliest of the following dates:

(i) The transferor's ending date of eligibility as determined under this section;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(2) If the transferor dies while on active duty, the ending date of the eligibility period for a child, who is eligible for transferred entitlement under § 21.7080, is the earliest of the following dates:

(i) The date 10 years from the transferor's date of death;

(ii) The ending date the transferor specified, if the transferor specified the period for which the transfer was effective;

(iii) The effective date of the transferor's revocation of transfer of entitlement as determined under § 21.7080(g)(2); or

(iv) The day the child attains age 26.

(Authority: 38 U.S.C. 3020)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28384, July 11, 1990; 56 FR 20133, May 2, 1991; 57 FR 15024, Apr. 24, 1992; 61 FR 6787, Feb. 22, 1996; 65 FR 5787, Feb. 7, 2000; 66 FR 39280, July 30, 2001; 68 FR 34330, June 9, 2003; 71 FR 75674, Dec. 18, 2006; 73 FR 2427, Jan. 15, 2008]

**§ 21.7051 Extended period of eligibility.**

(a) *Period of eligibility may be extended.* VA shall grant an extension of the applicable delimiting period, as otherwise determined by § 21.7050 of this part provided:

(1) The veteran applies for an extension within the time specified in § 21.1033(c).

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7020(b)(38)) It must be clearly established by medical evidence that such a program of education was medically infeasible. VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance, because of the short disability.

(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 98–525, Pub. L. 100–689) (Nov. 18, 1988)

(b) *Commencing date.* The veteran shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7050 of this part, and

(2) Must either be—

(i) On or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(ii) On or before the commencing date of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 38 U.S.C. 3031(d); Pub. L. 98–525)

(c) *Length of extended periods of eligibility.* A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original eligibility period that his or her training became medically infeasible to the earliest of the following date.

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically infeasible,

(ii) The last date of the veteran's delimiting date as determined by § 21.7050 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by § 21.7050 of this part.

(Authority: 38 U.S.C. 3031(d); Pub. L. 98–525)

[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 20133, May 2, 1991; 64 FR 23773, May 4, 1999; 72 FR 16980, Apr. 5, 2007]

ENTITLEMENT

**§ 21.7070 Entitlement.**

An eligible servicemember or veteran is entitled to a monthly benefit for periods of time during which he or she is

enrolled in, and satisfactorily pursuing, an approved program of education.

(Authority: 38 U.S.C. 3014; Pub. L. 98–525)

**§ 21.7072 Entitlement to basic educational assistance.**

The provisions of this section apply to all veterans and servicemembers except to those to whom § 21.7073 applies.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c), and (d) of this section and in § 21.7073, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance).

(Authority: 38 U.S.C. 3013; Pub. L. 98–525) (Nov. 18, 1988)

(b) *Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship, or involuntarily for the convenience of the Government as a result of a reduction in force.* (1) Except as provided in § 21.7073, when the provisions of paragraph (b) of this section are met, an eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's continuous active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's qualifying obligated period of active duty. In the case of a veteran to whom the definition of continuous active duty found in either § 21.7020(b)(6)(iii) or § 21.7020(b)(6)(iv) applies, the length of the continuous active duty will be the aggregate length of the periods of active duty referred to in those paragraphs. Except as provided in § 21.7073, VA will apply paragraph (b) of this section when the individual:

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044,

(ii) Serves less than 36 months of continuous active duty service after June 30, 1985 (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her qualifying obligated period of active duty is less than 3 years), and

(iii) Is discharged or released from active duty either—

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected,

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(E) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011(f), 3013(a))

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

(i) Excess leave,

(ii) Noncreditable time, and

(iii) Not-on-duty time.

(Authority: 38 U.S.C. 3013(a); Pub. L. 98–525)

(c) *Entitlement based on service in the Selected Reserve.* (1) Except as provided in § 21.7073, when the provisions of paragraph (c) of this section are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service that is after June 30, 1985, and that, in

the case of an individual who had no previous eligibility under 38 U.S.C. chapter 34, is part of the individual's qualifying obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985 (other than a month in which the individual serves on active duty). Except as provided in § 21.7073, VA will apply the provisions of paragraph (c) of this section when the individual—

(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044, and

(ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in §§ 21.7042(b) and 21.7044(b).

(Authority: 38 U.S.C. 3013(b))

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:

(i) Excess leave,

(ii) Noncreditable time, and

(iii) Not-on-duty time.

(4) A veteran described in this paragraph is not entitled to any basic educational assistance for service in the Selected Reserve in excess of the number of months of service in the Selected Reserve which is evenly divisible by four.

(5) VA will consider a veteran to be entitled to 36 months of basic educational assistance when he or she—

(i) Initially enters on active duty after June 30, 1985;

(ii) Is attempting to establish eligibility through service in the Selected Reserve;

(iii) Has completed the active duty service required in § 21.7042 of this part; and

(iv) Is participating in the Selected Reserve, but has not participated for the length of time required in § 21.7042 of this part.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98–525)

(d) *Entitlement affected by failure to complete required Selected Reserve service.* If a veteran attempts to establish eligibility through a combination of active duty service and service in the Selected Reserves, but fails to do so, his or her entitlement shall be the number of months to which he or she is entitled on the basis of his or her active duty service.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98–525)

(e) *Repayment of an education loan affects entitlement.* A period of service counted for the purpose of repayment under section 902 of the Department of Defense Authorization Act, 1981, of an education loan may not also be counted for the purposes of determining the number of months of the veteran's or servicemember's entitlement to basic educational assistance. Therefore, in determining a veteran's or servicemember's entitlement, VA will—

(1) Determine his or her entitlement as provided in paragraph (a), (b), (c) or (d) of this section, as appropriate, and

(2) Subtract from the figure determined in paragraph (e)(1) of this section the number of months of service counted for the purposes of repayment of an educational loan under section 902 of the Department of Defense Authorization Act, 1981.

(Authority: 38 U.S.C. 3033(b); Pub. L. 98–525)

(f) *Limitation on entitlement.* Except as provided in § 21.7076(e) and § 21.7135(s) of this part no one is entitled to more than 36 months of full-time basic educational assistance (or its equivalent in part-time educational assistance).

(Authority: 38 U.S.C. 3013(c), 3013(f); Pub. L. 98–525, Pub. L. 102–127)(Oct. 10, 1991)

[53 FR 1757, Jan. 22, 1988, as amended at 56 FR 20134, May 2, 1991; 58 FR 26241, May 3, 1993; 59 FR 24052, May 10, 1994; 61 FR 6788, Feb. 22, 1996; 68 FR 34330, June 9, 2003]

### § 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) *Individuals who establish eligibility during the open period.* (1) The provisions of this paragraph apply to a veteran or servicemember who:

(i) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(ii) Has less than $1,200 deducted from his or her military pay; and

(iii) Before completing the period of service which the individual was obligated to serve on December 1, 1988, the individual:

(A) Is discharged or released from active duty for a service-connected disability, a medical condition which preexisted that service, or hardship; or

(B) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(D) Is involuntarily discharged or released from active duty for convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3018(b)(3))

(2) A veteran described in paragraph (a)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of:

(i) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is $1,200, or

(ii) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 3013(c))

(b) *Individuals who establish eligibility following involuntary separation.* (1) The provisions of this paragraph apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

(Authority: 38 U.S.C. 3018A)

(2) A veteran described in paragraph (b)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(i) 36 months, or

(ii) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013)

[59 FR 24053, May 10, 1994, as amended at 65 FR 67266, Nov. 9, 2000]

### § 21.7074 Entitlement to supplemental educational assistance.

In determining the entitlement of a veteran or servicemember who is eligible for supplemental educational assistance VA shall—

(a) Calculate the veteran's or servicemember's entitlement to basic educational assistance on the day he or she establishes eligibility for supplemental educational assistance, and

(b) Credit the veteran or servicemember with the same number of months and days entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023; Pub. L. 98–525)

**§21.7075 Entitlement to tuition assistance top-up.**

An individual who is entitled to educational assistance under 38 U.S.C. chapter 30 is also entitled to 36 months of tuition assistance top-up. This entitlement is parallel to, and does not replace, the entitlement to educational assistance available under §21.7072. If the individual receives tuition assistance top-up, VA will make a charge against both the entitlement under §21.7072 and the entitlement under this section. The charge will be as described in §21.7076(b)(10).

(Authority: 38 U.S.C. 3013, 3014(b), 3032)

[72 FR 16980, Apr. 5, 2007, as amended at 72 FR 35662, June 29, 2007]

**§21.7076 Entitlement charges.**

(a) *Overview*. VA will make charges against entitlement as stated in this section.

(1) Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. chapter 30 as the assistance is paid.

(2) There will be a charge (for record purposes only) against the remaining entitlement, under 38 U.S.C. chapter 34, of an individual who is receiving the educational assistance under §21.7137 of this part. The record-purpose charges against entitlement under 38 U.S.C. chapter 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chapters 30 and 34 to which the veteran or servicemember may be entitled. (*See* §21.4020(a) of this part).

(3) Generally, VA will base those entitlement charges on the principle that a veteran or servicemember who trains full time for one day should be charged one day of entitlement. However, this general principle does not apply to a veteran or servicemember who:

(i) Is pursuing correspondence training;

(ii) Is pursuing flight training;

(iii) Is pursuing an apprenticeship or other on-job training;

(iv) Is paid an accelerated payment;

(v) Is receiving educational assistance for taking an approved licensing or certification test; or

(vi) Is receiving tuition assistance top-up.

(4) The provisions of this section apply to:

(i) Veterans and servicemembers training under 38 U.S.C. chapter 30; and

(ii) Veterans training under 38 U.S.C. chapter 31 who make a valid election under §21.21 of this part to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3013, 3014(b), 3014A, 3689)

(b) *Determining entitlement charge*. This paragraph states how VA generally will determine the charge against the entitlement of a servicemember or veteran who is receiving educational assistance. However, when the circumstances described in paragraph (e) apply to a servicemember or veteran, VA will use that paragraph to determine an entitlement charge instead of this paragraph.

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-job training; those receiving tuition assistance top-up; those receiving educational assistance for taking an approved licensing or certification test; those receiving tutorial assistance; and those receiving an accelerated payment, VA will make a charge against entitlement:

(i) On the basis of total elapsed time (one day for each day of pursuit) if the servicemember or veteran is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or servicemember is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of the award to date of discontinuance. If the veteran or servicemember changes his or her training time after the commencing date of the award, VA will—

(i) Divide the enrollment period into separate periods of time during which the veteran's or servicemember's training time remains constant, and.

(ii) Compute the elapsed time separately for each time period.

(Authority: 38 U.S.C. 3013)

(3) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against 38 U.S.C. chapter 30 entitlement of—

(i) .75 of a month in the case of payments made during the first six months of the veteran's pursuit of the program of apprenticeship or other on-job training,

(ii) .55 of a month in the case of payments made during the second six months of the veteran's pursuit of the program of apprenticeship or other on-job training, and

(iii) .35 of a month in the case of payments made following the first twelve months of the veteran's pursuit of apprenticeship or other on-job training.

(Authority: 38 U.S.C. 3032(c))

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, including any month in which the veteran fails to complete 120 hours of training, VA will make a record-purpose charge against 38 U.S.C. chapter 34 entitlement, if any, as follows:

(i) For training that occurs before October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement by one month for each month of benefits paid.

(ii) For training that occurs on or after October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution.

(Authority: 38 U.S.C. 3015(e), 3032(c), 3687; sec. 102, Pub. L. 108–454, 118 Stat. 3600)

(5) When a veteran or servicemember is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of educational assistance otherwise applicable to him or her for full-time training (disregarding in the case of a servicemember the cost of course comparison).

(Authority: 38 U.S.C. 3032(d))

(6) When a veteran or servicemember is pursuing a program of education partly in residence and partly by correspondence, VA will make a charge against entitlement—

(i) For the residence portion of the program as provided in paragraphs (b)(1) and (2) of this section, and

(ii) For the correspondence portion of the program as provided in paragraph (b)(5) of this section.

(Authority: 38 U.S.C. 3032(c), 3032(d))

(7) When a veteran or servicemember is paid an accelerated payment, VA will make a charge against entitlement for each accelerated payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month; and

(ii) Will be determined by dividing the amount of the accelerated payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. If the rate of basic educational assistance increases during the enrollment period, VA will charge entitlement for the periods covered by the initial rate and the increased rate, respectively.

(Authority: 38 U.S.C. 3014A)

(8) If an individual is paid tutorial assistance as provided in § 21.7141, the following provisions will apply.

(i) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual under 38 U.S.C. ch. 30.

(ii) VA will make a charge against the period of entitlement of one month for each amount of tutorial assistance paid under 38 U.S.C. ch. 30, to the individual in excess of $600 that is equal to

the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in §§21.7136, 21.7137 and 21.7138, as appropriate. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3019; Pub. L. 100–689) (Nov. 18, 1988)

(9) When a veteran or servicemember is pursuing a program of education through flight training, VA will make a charge against entitlement for each payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training.

(Authority: 38 U.S.C. 3031(f))

(10) When a servicemember receives tuition assistance top-up, VA will make a charge against his or her entitlement as established under §21.7072 equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember's monthly rate of basic educational assistance as calculated under §21.7136. VA will make a charge against his or her tuition assistance top-up entitlement as established under §21.7075 by subtracting from that entitlement the total number of months and days in the term, quarter, or semester for which the servicemember received tuition assistance.

(Authority: 38 U.S.C. 3014(b))

(11) When a veteran or servicemember receives educational assistance for taking an approved licensing or certification test, VA will make a charge against his or her entitlement equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember's monthly rate of basic educational assistance as calculated under §21.7136, excluding any additional ''kicker'' that may be paid under §21.7136(g).

(Authority: 38 U.S.C. 3032(f)(2))

(c) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived, and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting the portion of the debt attributable to interest, administrative costs of collection, court costs and marshal fees from the compromise offer,

(ii) Subtracting the amount determined in paragraph (c)(3)(i) of this section from the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this

section by the amount of the entitlement which represents the whole overpaid period.

(Authority: 38 U.S.C. 3013; Pub. L. 98–525)

(d) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran or servicemember is enrolled for the entire term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the veteran or servicemember is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;

(2) The veteran or servicemember cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The veteran or servicemember interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester;

(4) The veteran or servicemember requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the veteran or servicemember negotiated a check for educational assistance for the certified period is immaterial.

(Authority: 38 U.S.C. 3013; Pub. L. 98–525)

(e) *No entitlement charge for some individuals.* When the criteria described in this paragraph are met, VA will make no charges against entitlement as described in paragraph (b) of this section.

(1) VA will make no charge against an individual's entitlement when the individual—

(i) Either—

(A) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10, U.S. Code; or

(B) While serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to a new duty location or assignment or to perform an increased amount of work.

(ii) Failed to receive credit or lost training time toward completion of the individual's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against the entitlement of an individual described in paragraph (e)(1) of this section shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time.

(Authority: 38 U.S.C. 3013(f); Pub. L. 102–127)(Oct. 10, 1991))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28385, July 11, 1990; 56 FR 20134, May 2, 1991; 56 FR 26035, June 6, 1991; 56 FR 31332, July 10, 1991; 57 FR 15024, Apr. 24, 1992; 58 FR 26241, May 3, 1993; 68 FR 35179, June 12, 2003; 72 FR 16980, Apr. 5, 2007; 73 FR 65264, Nov. 3, 2008]

TRANSFER OF ENTITLEMENT TO BASIC EDUCATIONAL ASSISTANCE TO DEPENDENTS

### § 21.7080 Transfer of entitlement.

An individual entitled to educational assistance under the Montgomery GI Bill—Active Duty (38 U.S.C. chapter 30) program based on his or her own active duty service, and who is approved by a service department to transfer a portion of his or her entitlement, may transfer up to a total of 18 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available.

(a) *Application of sections in subpart K to individuals in receipt of transferred entitlement.* In addition to the rules in

this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions*. Section 21.7020—Definitions.

(Authority: 38 U.S.C. 3020)

(2) *Claims and Applications*. Section 21.7030—Applications, claims, and time limits.

(Authority: 38 U.S.C. 3020)

(3) *Eligibility*. (i) Section 21.7050—Ending dates of eligibility, only paragraphs (h) and (i); and

(ii) Section 21.7051—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3020)

(4) *Entitlement*. (i) Section 21.7070—Entitlement;

(ii) Section 21.7075—Entitlement to tuition assistance top-up; and

(iii) Section 21.7076—Entitlement charges.

(Authority: 38 U.S.C. 3020)

(5) *Counseling*. (i) Section 21.7100—Counseling; and

(ii) Section 21.7103—Travel expenses.

(Authority: 38 U.S.C. 3020)

(6) *Programs of Education*. (i) Section 21.7110—Selection of program of education;

(ii) Section 21.7112—Programs of education combining two or more types of courses; and

(iii) Section 21.7114—Change of program.

(Authority: 38 U.S.C. 3020)

(7) *Courses*. (i) Section 21.7120—Courses included in programs of education;

(ii) Section 21.7122—Courses precluded; and

(iii) Section 21.7124—Overcharges.

(Authority: 38 U.S.C. 3020)

(8) *Payments—Educational Assistance*. (i) Section 21.7130—Educational Assistance;

(ii) Section 21.7131—Commencing dates, except for paragraphs (d), (g), (l), (m), (n), (o), and (p) of §21.7131;

(iii) Section 21.7133—Suspension or discontinuance of payments;

(iv) Section 21.7135—Discontinuance dates, except for paragraphs (q), (s) and (u) of §21.7135;

(v) Section 21.7139—Conditions which result in reduced rates or no payment, except for paragraph (c) of §21.7139. VA will apply the rules in paragraph (d) of §21.7139 to dependents, who are on active duty;

(vi) Section 21.7140—Certifications and release of payments;

(vii) Section 21.7141—Tutorial assistance;

(viii) Section 21.7142—Accelerated payments;

(ix) Section 21.7143—Nonduplication of educational assistance; and

(x) Section 21.7144—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent.

(Authority: 38 U.S.C. 3020)

(9) *Pursuit of courses*. (i) Section 21.7150—Pursuit;

(ii) Section 21.7151—Advance payment and accelerated payment certifications;

(iii) Section 21.7152—Certification of enrollment;

(iv) Section 21.7153—Progress and conduct;

(v) Section 21.7154—Pursuit and absences;

(vi) Section 21.7156—Other required reports;

(vii) Section 21.7158—False, late, or missing reports; and

(viii) Section 21.7159—Reporting fee.

(Authority: 38 U.S.C. 3020)

(10) *Course Assessment*. (i) Section 21.7170—Course measurement; and

(ii) Section 21.7172—Measurement of concurrent enrollments.

(Authority: 38 U.S.C. 3020)

(11) *State approving agencies.* Section 21.7200—State approving agencies.

(Authority: 38 U.S.C. 3020)

(12) *Approval of courses.* (i) Section 21.7220—Course approval; and

(ii) Section 21.7222—Courses and enrollments which may not be approved.

(Authority: 38 U.S.C. 3020)

(13) *Administrative.* (i) Section 21.7301—Delegations of authority;

(ii) Section 21.7302—Finality of decisions;

(iii) Section 21.7303—Revision of decisions;

(iv) Section 21.7305—Conflicting interests;

(v) Section 21.7307—Examination of records;

(vi) Section 21.7310—Civil rights; and

(vii) Section 21.7320—Procedural protection; reduction following loss of dependent.

(Authority: 38 U.S.C. 3020)

(b) *Proof of transfer of entitlement option.* An individual transferring entitlement, or the dependent to whom entitlement is transferred, must submit to VA—

(1) A copy of DD Form 2366–2, entitled ''Montgomery GI Bill Act of 1984 (MGIB) Transferability Program''; or

(2) Any other document issued and signed by the transferor's service department that shows the transferor is authorized to transfer entitlement.

(Authority: 38 U.S.C. 3020)

(c) *Eligible dependents.* (1) An individual transferring entitlement under this section may transfer entitlement to—

(i) The individual's spouse;

(ii) One or more of the individual's children; or

(iii) A combination of the individuals referred to in paragraphs (c)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter.

(3) A child must meet the definition of child in § 3.57 of this chapter. The transferor must make the required designation shown in § 21.7080(e)(1) before the child attains age 23.

(4) A stepchild, who meets VA's definition of child in § 3.57 of this chapter and is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3020)

(d) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her service department to transfer entitlement may do so at any time after such approval up until the transferor's ending date of eligibility as determined under § 21.7050.

(Authority: 38 U.S.C. 3020)

(e) *Designating dependents, designating the amount to transfer, and period of transfer.* (1) An individual transferring entitlement under this section must—

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on a copy of DD Form 2366–2, Montgomery GI Bill Act of 1984 Transferability Program, or on any document signed by the transferor that shows the information required in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(Authority: 38 U.S.C. 3020)

(f) *Maximum months of entitlement transferable.* (1) The maximum amount of entitlement a transferor may transfer is the lesser of—

(i) Eighteen months of his or her entitlement; or

(ii) The amount of entitlement he or she has available.

(2) Subject to the limitations in paragraph (f)(1) of this section, the transferor may transfer up to the maximum amount of transferable entitlement—

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3020)

(g) *Revocation of transferred entitlement.* (1) A transferor may revoke any unused portion of transferred entitlement any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the service department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3020)

(h) *Modifying a transfer of entitlement.* (1) A transferor may modify the designations he or she made under paragraph (e) of this section at any time. Any modification made will apply only to any unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the service department that initially approved the transferor to transfer entitlement. VA will accept a copy of the written notice addressed to the service department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the service department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3020)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by the dependents.

(Authority: 38 U.S.C. 3020)

(j) *Secondary school diploma (or equivalency certificate).* Children, who have attained age 18, and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3020)

(k) *Rate of payment of educational assistance.* VA will apply the rules in §21.7136 or §21.7137 (and the rules in §21.7138 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent the monthly rate of educational assistance that would be payable to the transferor except that VA will—

(1) Exclude the transferor's kicker for service in the Selected Reserve (§§21.7136(g) and 21.7137(e)) if the transferor is eligible for such kicker;

(2) Include the dependent's Selected Reserve kicker, if the dependent is eligible for a kicker from the Selected Reserve based on the dependent's own Selected Reserve service; and

(3) Disregard the fact that either the transferor or the dependent is on (or both are on) active duty and pay the veteran rate rather than the rate applicable to individuals on active duty.

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3020(h))

(l) *Restriction on payment of educational assistance to a dependent pursuing an on-the-job training or apprenticeship program while transferor is on active duty.* A dependent is not entitled to educational assistance for training pursued in an on-the-job training or apprenticeship program during periods the transferor is on active duty.

(Authority: 38 U.S.C. 3002(3), 3020(h))

(m) *Transferor fails to complete required service contract that afforded participation in the transferability program.* (1) The dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of active duty service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless the transferor did not complete the active duty service due to—

(i) His or her death;

(ii) A service-connected disability;

(iii) A medical condition which preexisted such service on active duty and which the Secretary of VA determines is not service-connected;

(iv) A hardship; or

(v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct, but that did interfere with the individual's performance of duty, as determined by the Secretary of each service department.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraphs (m)(1)(i) through (v) of this section.

(Authority: 38 U.S.C. 3020, 38 U.S.C. 3011(a)(1)(A)(ii))

(n) Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 30 based on his or her own active duty service. Dependents eligible for payment of educational assistance through transferred entitlement and who are eligible for payment under 38 U.S.C. chapter 30 based on their own active service—

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course.

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 30 as long as the only educational assistance paid is under 38 U.S.C. chapter 30. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 30), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3020, 3033, 3034(a), 3695)

[71 FR 75675, Dec. 18, 2006]

COUNSELING

## § 21.7100 Counseling.

A veteran or servicemember may receive counseling from VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an educational institution appropriate for the attainment of the educational objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances.

(Authority: 38 U.S.C. 3034, 3463; Pub. L. 98–525)

(b) Required counseling. (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program; and

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. chapter 30 when he or she—

(i) Fails to report;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(4) Counseling is not required for any other individual eligible for educational assistance established under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3032, 3463; Pub. L. 98–525, Pub. L. 99–576)

(c) *Availability of counseling.* Counseling is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans and making sound decisions about the changes.

(Authority: 38 U.S.C. 3034, 3463; Pub. L. 98–525)

(d) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the individual. In addition, VA shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the veteran's request for counseling, the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 3034, 3463; Pub. L. 98–525, Pub. L. 99–576)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28385, July 11, 1990]

### §21.7103 Travel expenses.

(a) *Travel for veterans and servicemembers.* (1) Except as provided in paragraph (a)(2) of this section, VA shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if—

(i) VA determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or

(ii) The individual has a compensable service-connected disability.

(2) VA shall not pay for the travel expenses for a veteran who is not residing in a State.

(Authority: 38 U.S.C. 111)

(b) *Travel for attendants.* (1) VA will authorize payment of travel expenses for an attendant while the individual is traveling when—

(i) The individual, because of a severe disability requires the services of an attendant when traveling, and

(ii) VA is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section.

(2) VA will not pay the attendant a fee for travel expenses if he or she is a relative as defined in §21.374 of this part.

(Authority: 38 U.S.C. 111)

(c) *Payment of travel expenses prohibited for most veterans.* VA shall not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 111)

CROSS REFERENCE: 21.374, Authorization for travel of attendants.

[55 FR 28385, July 11, 1990]

PROGRAMS OF EDUCATION

### §21.7110 Selection of a program of education.

(a) *Payments of educational assistance are usually based on pursuit of a program of education.* In order to receive educational assistance under 38 U.S.C. chapter 30, a veteran or servicemember must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher or deficiency courses;

(3) Be pursuing other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided

under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting tuition assistance top-up.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3689)

(b) *Approval of a program of education.* VA will approve a program of education under 38 U.S.C. chapter 30 that a veteran or servicemember selects if:

(1) It meets the definition of a program of education found in § 21.7020(b)(23);

(2) Except for a program consisting of a licensing or certification test, has an objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the veteran or servicemember maintain employment in a vocation or profession, the veteran or servicemember is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3002(3), 3034, 3471, 3689)

[72 FR 16980, Apr. 5, 2007]

### § 21.7112 Programs of education combining two or more types of courses.

(a) *Concurrent enrollment.* (1) When a veteran or servicemember cannot successfully schedule his or her complete program at one educational institution, VA may approve a program of concurrent enrollment. When requesting such a program, the veteran or servicemember must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program. When the standards for measurement of the courses pursued concurrently in the two educational institutions are different, the concurrent enrollment shall be measured by converting the measurement of courses being pursued at the second educational institution under the standard applicable to such institution to its equivalent measurement under the standard required for full-time courses applicable to the primary educational institution. For a complete discussion of measurement of concurrent enrollments see § 21.7172 of this part.

(Authority: 38 U.S.C. 3034, 3688; Pub. L. 99–576)

(2) The veteran or servicemember must submit the monthly certification of attendance and pursuit. Each educational institution where concurrent enrollment is approved must either endorse that certification, or submit a separate certification showing the veteran's or servicemember's enrollment and pursuit.

(Authority: 38 U.S.C. 3034(b); Pub. L. 98–525)

(b) *Courses offered under contract.* In administering benefits payable under 38 U.S.C. chapter 30, the VA will apply the provisions of § 21.4233(e) of this part in the same manner as they are applied under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034(a); Pub. L. 98–525)

(c) *Television.* In determining whether a veteran or servicemember may pursue all or part of a program of education under 38 U.S.C. chapter 30 by television, VA will apply the provisions of § 21.4233(c).

(Authority: 38 U.S.C. 3034(a))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 62 FR 40280, July 28, 1997]

### § 21.7114 Change of program.

In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, VA will apply the provisions of § 21.4234 of this part. VA will not consider programs of education a veteran or servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3034, 3691; Pub. L. 98–525, Pub. L. 101–366) (June 1, 1991)

[57 FR 29027, June 30, 1992]

COURSES

**§ 21.7120 Courses included in programs of education.**

(a) *General.* Generally, VA will approve, and will authorize payment of educational assistance, for the individual's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7220 of this part and which forms a part of a program of education as defined in § 21.7020(b)(23) of this part. Restrictions on this general rule are stated in § 21.7222(b) of this part, however.

(Authority: 38 U.S.C. 3002(3), 3452; Pub. L. 98–525)

(b) *Avocational and recreational courses are restricted.* (1) VA will not pay educational assistance for an enrollment in any course—

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) VA presumes that the following courses are avocational or recreational in character unless the veteran or servicemember justifies their pursuit to VA as provided in paragraph (b)(3) of this section. The courses are:

(i) Any photography course or entertainment course, or

(ii) Any music course, instrumental or vocal, public speaking course or courses in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(iii) Any other type of course which VA determines to be avocational or recreational.

(3) To overcome the presumption that a course is avocational or recreational in character, the veteran or servicemember must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(Authority: 38 U.S.C. 3034, 3473; Pub. L. 98–525)

(c) *Flight training.* (1) VA may pay educational assistance for an enrollment in a flight training course—

(i) When an institution of higher learning offers the course for credit toward the standard college degree the veteran or servicemember is pursuing; or

(ii) When—

(A) A flight school is offering the course,

(B) The State approving agency and the Federal Aviation Administration have approved the course,

(C) The course of flight training is generally accepted as necessary to attain a recognized vocational objective in the field of aviation which the veteran or servicemember is pursuing, and

(D) The training for which payment is made occurred after September 29, 1990.

(2) VA will not pay educational assistance for an enrollment in a flight training course which the veteran or servicemember is pursuing as ancillary training for a vocation other than aviation.

(Authority: 38 U.S.C. 3034(f))

(d) *Independent study.* (1) Except as provided in paragraph (d)(2) of this section, effective October 29, 1992, VA may pay educational assistance to a veteran or servicemember who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran or servicemember to complete his or her program of education,

(ii) On October 29, 1992, the veteran or servicemember was receiving educational assistance for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(iii) The veteran or servicemember has remained continuously enrolled in the program of education of which the nonaccredited independent study course or unit subject forms a part

from October 29, 1992, to the date of enrollment by the veteran or servicemember in the nonaccredited independent study course or unit subject.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, VA may pay educational assistance to a veteran or servicemember for enrollment in a course or unit subject offered by independent study which, though part of an approved program of education, is not required in order for the veteran or servicemember to complete the program of education (*i.e.*, an elective) when—

(i) The veteran or servicemember was enrolled in and receiving educational assistance for the course or unit subject on October 29, 1992, and

(ii) The veteran or servicemember remains continuously enrolled in the course or unit subject.

(3) Whether or not the veteran or servicemember is enrolled will be determined by the regularly prescribed standards and practices of the educational institution offering the course or unit subject.

(Authority: 38 U.S.C. 3014, 3034, 3076, 3680A(a); sec. 313(b), Pub. L. 102–568, 106 Stat. 4333)

[53 FR 1757, Jan. 22, 1988, as amended at 53 FR 3207, Feb. 4, 1988; 57 FR 15024, Apr. 24, 1992; 61 FR 6788, Feb. 22, 1996; 61 FR 29297, June 10, 1996]

### § 21.7122 Courses precluded.

(a) *Unapproved courses*. The provisions of this section which refer to a State approving agency will be deemed to refer to VA with respect to a State when that State does not have and fails or declines to create or designate a State approving agency; or fails to enter into an agreement as provided in § 21.4153 (see § 21.4150(c)). Except for payment of tuition assistance top-up, VA will not pay educational assistance for:

(1) An enrollment in any course that a State approving agency has not approved;

(2) A new enrollment in a course while a State approving agency has suspended the course for new enrollments;

(3) Any period within an enrollment in a course if the period occurs after the date a State approving agency disapproves the course; or

(4) Taking a licensing or certification test after the date a State approving agency disapproves the test. See § 21.7220.

(Authority: 38 U.S.C. 3014(b), 3034, 3672)

(b) *Courses outside a program of education*. VA will not pay educational assistance for an enrollment in any course that is not part of a program of education unless the veteran or servicemember is enrolled in:

(1) A refresher course (including a course which will permit the veteran or servicemember to update knowledge and skills or be instructed in the technological advances which have occurred in the veteran's or servicemember's field of employment);

(2) A deficiency course;

(3) A preparatory, special education, or training course necessary to enable the veteran or servicemember to pursue an approved program of education; or

(4) A course for which the veteran or servicemember is seeking tuition assistance top-up.

(Authority: 38 U.S.C. 3002(3), 3014(b), 3034, 3452(b))

(c) *Erroneous, deceptive, misleading practices*. (1) VA will not pay educational assistance for:

(i) An enrollment in any course offered by an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimation.

(ii) Taking a licensing or certification test if the organization or entity offering the test uses advertising or sales practices, or candidate handbooks, that are erroneous, deceptive, or misleading by actual statement, omission, or intimation.

(2) VA will apply the provisions of § 21.4252(h) in making these payment decisions.

(Authority: 3034, 3689(d), 3696)

(d) *Restrictions on enrollment: percentage of students receiving financial support*. Except as otherwise provided VA shall not approve an enrollment in any

course for a veteran or servicemember, not already enrolled for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by VA pursuant to title 38, United States Code. This restriction may be waived in whole or in part. In determining which courses to apply this restriction to and whether to waive this restriction, VA will apply the provisions of §21.4201 of this part to enrollments under 38 U.S.C. chapter 30 in the same manner as it does to enrollments under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034, 3473(d); Pub. L. 98–525)

(e) *Other courses.* VA shall not pay educational assistance for—

(1) An enrollment in an audited course (see §21.4252(i));

(2) An enrollment in a course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see §21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in §21.4252(l);

(5) Except as provided in §21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

(6) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance or monthly certifications of pursuit, an owner of the school, or an operator of the school;

(7) Except as provided in §21.7120(d), an enrollment in a nonaccredited independent study course;

(8) An enrollment in a course offered under contract for which VA approval is prohibited by §21.4252(m); or

(9) Taking a licensing or certification test after the date the State approving agency suspends approval of the test.

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680(g), 3689(d))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 56 FR 20135, May 2, 1991; 61 FR 6788, Feb. 22, 1996; 65 FR 81742, Dec. 27, 2000; 72 FR 16981, Apr. 5, 2007]

### §21.7124 Overcharges.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an educational institution for further enrollments when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges that the educational institution requires from similarly circumstanced nonveterans enrolled in the same course.

(Authority: 38 U.S.C. 3034, 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges or receives from a veteran or servicemember fees that exceed the established fees that the organization or entity requires from similarly circumstanced nonveterans taking the same test.

(Authority: 38 U.S.C. 3689(d), 3690(a))

[72 FR 16981, Apr. 5, 2007]

PAYMENTS—EDUCATIONAL ASSISTANCE

### §21.7130 Educational assistance.

VA will pay educational assistance to an eligible veteran or servicemember while he or she is pursuing approved courses in a program of education at the rates specified in §§21.7136, 21.7137 and 21.7139 of this part.

(Authority: 38 U.S.C. 3015, 3022, 3032; Pub. L. 98–525)

### §21.7131 Commencing dates.

VA will determine under this section the commencing date of an award or increased award of educational assistance. When more than one paragraph

in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) *For other than licensing or certification tests.* (i) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(A) The date the educational institution certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the course;

(D) One year before the date VA receives approval notice for the course; or

(E) November 1, 2000, if paragraph (p) of this section applies to the individual.

(ii) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(A) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(B) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 3689, 5110, 5113)

(b) *Certification by school—the course or subject leads to a standard college degree.* (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) When a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter or semester in which the student is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that—

(i) The published standards of the school require the student to register before reporting, and

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered.

(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after

the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98–525)

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.* (1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.

(2) When a veteran or servicemember enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance.

(3) When a veteran enrolls in a program of apprenticeship or other on-the-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.

(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98–525, Pub. L. 99–576)

(d) *Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer.* If a veteran served in the Armed Forces both as an enlisted member or warrant officer and as a commissioned officer, and that service was such that he or she is eligible only through application of §21.7020(b)(6)(v), the commencing date of the award of educational assistance will be no earlier than November 30, 1999.

(Authority: Sec. 702(c), Pub. L. 106–117, 113 Stat. 1583)

(e) *Increase for a dependent.* A veteran who was eligible for educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989, is entitled to additional educational assistance for dependents. No other veteran or servicemember is eligible for additional educational assistance. The effective date for the additional educational assistance is determined as follows.

(1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply.

(i) The effective date of the increase will be the date of entrance or reentrance if—

(A) VA receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) VA receives necessary evidence within 1 year of its request, or the veteran shows that good cause exists for VA's not receiving the necessary evidence within 1 year of its request. See §21.7032.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if—

(A) VA receives the claim for the increase more than 1 year after the date of entrance or reentrance, and

(B) VA receives notice of the dependent's existence if evidence is received either within 1 year of VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(iii) The effective date will be the date VA receives all necessary evidence, if that evidence is received more than 1 year from the date VA requests it, unless the veteran is able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence. If the veteran shows good cause, the provisions of paragraph (e)(1)(ii)(B) of this section will apply.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(ii) Date notice is received of the dependent's existence if evidence is received either within 1 year of the VA request, or the veteran shows that there is good cause to extend the one-

year time limit to the date on which VA received notice of the dependent's existence.

(iii) The date VA receives evidence if this date is more than 1 year after the VA request, and the veteran is not able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.

(Authority: 38 U.S.C. 5110(n))

(See § 3.667 of this chapter as to effective dates with regard to children age 18 and older who are attending school)

(f) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a veteran's or servicemember's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98–525)

(g) *Correction of military records (§ 21.7050(b)).* The eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases the commencing date of educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3031(b); Pub. L. 98–525)

(h) *Individuals in a penal institution.* If a veteran or a servicemember is paid a reduced rate of educational assistance under § 21.7139 (c) and (d) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3034, 3482(g); Pub. L. 98–525)

(i) *Commitment to service in the Selected Reserve.* If a veteran has established eligibility to educational assistance through two years' active duty service, and he or she establishes entitlement to an increased monthly rate through commitment to serve four years in the Selected Reserve, the effective date of the increase is the date on which he or she—

(1) Is committed to serve four years in the Selective Reserve, and

(2) Is attached to a unit of the Selected Reserve.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525)

(j) *Increase due a servicemember due to monetary contributions.* (1) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the term, quarter, or semester following the term, quarter, or semester in which the servicemember made the contribution(s).

(2) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution not operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the enrollment period following the enrollment period in which the servicemember made the contribution.

(Authority: 38 U.S.C. 3011(e), 3012(f))

(k) *Increase (''kicker'') due to service in the Selected Reserve.* If a veteran is entitled to an increase (''kicker'') in the monthly rate of basic educational assistance because he or she has met the requirements of § 21.7136(g) or § 21.7137(e), the effective date of that increase (''kicker'') will be the latest of the following dates:

(1) The commencing date of the veteran's award as determined by paragraphs (a) through (j) of this section;

(2) The first date on which the veteran is entitled to the increase (''kicker'') as determined by the Secretary of the military department concerned; or

(3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

(l) *Eligibility established under § 21.7042 (a)(7) or (b)(10).* This paragraph must be

used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either §21.7042 (a)(7) or (b)(10). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by §21.7042(g)(4) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in §21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 5113; sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(m) *Eligibility established under 21.7045(d).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under §21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by §21.7045(d)(3) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in §21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 3018C(a), (b), 5113)

(n) *Eligibility established under §21.7045(c).* The effective date of an award of educational assistance when the veteran has established eligibility under §21.7045(c) is as follows:

(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following.

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) October 23, 1992, provided that VA received the $1,200 required to be collected pursuant to §21.7045(c)(2) and

any other evidence necessary to establish that the election is valid before the later of:

(A) October 23, 1993; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(1)(ii) of this section are not met.

(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on the date he or she made a valid election to receive educational assistance under 38 U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest of the following:

(i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section; or

(ii) The date on which the veteran made a valid election to receive educational assistance under 38 U.S.C. chapter 30 provided that VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the election is valid before the later of:

(A) One year from the date VA received the valid election; or

(B) One year from the date VA requested the $1,200 or the evidence necessary to establish a valid election; or

(iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2) and all other evidence needed to establish that the election is valid, if the provisions of paragraph (n)(2)(ii) of this section are not met.

(Authority: 38 U.S.C. 3018B)

(o) *Eligibility established under § 21.7045(e).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(e). The commencing date of an award of educational assistance for such a veteran or servicemember is the later of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (k) of this section; or

(2) The date on which—

(i) The servicemember's basic pay is reduced by $2,700;

(ii) The Secretary of the military department concerned collected the difference between $2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the veteran's election under § 21.7045(e), provided that this collection was accomplished through a method other than reducing the veteran's retired or retainer pay; or

(iii) The Secretary of the military department concerned first reduced the veteran's retired or retainer pay in order to collect the difference between $2,700 and the amount by which the military department concerned reduced the veteran's basic pay following the election under § 21.7045(e).

(Authority: 38 U.S.C. 3018C(e))

(p) *Eligibility established due to changes to §§ 21.7042 and 21.7044.* The commencing date of educational assistance will be no earlier than November 1, 2000, if a veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (p)(1) through (p)(4) of this section and the veteran is enabled to establish eligibility due to the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(1) *A period of active duty other than the initial period was used to establish eligibility.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance.

(Authority: Sec. 102(e), Pub. L. 106–419, 114 Stat. 1825)

(2) *High school education eligibility criterion met after the qualifying period of active duty.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and

21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(3) *High school education eligibility criterion met after October 29, 1994.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance.

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(4) *High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990.* The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility, the veteran must before January 1, 1990, meet the requirements for a secondary school diploma (or equivalency certificate).

(Authority: Sec. 103(e), Pub. L. 106–419, 114 Stat. 1826–27)

(q) *Fugitive felons.* (1) An award of educational assistance allowance to an otherwise eligible veteran may begin effective the date the warrant for the arrest of the felon is cleared by—

(i) Arrest;

(ii) Surrendering to the issuing authority;

(iii) Dismissal; or

(iv) Court documents (dated after the warrant) showing the veteran is no longer a fugitive.

(2) An award of educational assistance allowance to a dependent who is otherwise eligible to transferred entitlement may begin effective the date the warrant is cleared by—

(i) Arrest;

(ii) Surrendering to the issuing authority;

(iii) Dismissal; or

(iv) Court documents (dated after the warrant) showing the individual is no longer a fugitive.

(Authority: 38 U.S.C. 5313B)

(r) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under §21.7080, the commencing date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in §3.50(a) of this chapter.

(Authority: 38 U.S.C. 3020)

(s) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under §21.7080, the commencing date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in §3.50(a) of this chapter;

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3020)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 56 FR 11672, Mar. 20, 1991; 57 FR 40615, Sept. 4, 1992; 61 FR 6788, Feb. 22, 1996; 62 FR 55519, Oct. 27, 1997; 63 FR 34132, June 23, 1998; 64 FR 23773, May 4, 1999; 65 FR 5788, Feb. 7, 2000; 66 FR 38939, July 26, 2001; 66 FR 39280, July 30, 2001; 66 FR 42586, Aug. 13, 2001; 68 FR 34331, June 9, 2003; 70 FR 25787, May 16, 2005; 71 FR 75677, Dec. 18, 2006; 72 FR 16981, Apr. 5, 2007]

### § 21.7133 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

[63 FR 35837, July 1, 1998]

### § 21.7135 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. Reference to reduction of educational assistance due to the loss of a dependent only applies to veterans who were eligible to receive educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989. No other veteran or servicemember will have his or her educational assistance reduced due to a loss of a dependent. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of veteran or servicemember.* (1) If the veteran or servicemember receives an advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(2) In all other cases if the veteran or servicemember dies while pursuing his or her program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(b) *Death of dependent.* When a veteran's dependent dies, and the veteran has been receiving additional educational assistance based on the dependent, the effective date of reduction of the veteran's educational assistance shall be the last day of the month in which the death occurs.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98–525)

(c) *Divorce.* If the veteran becomes divorced, the effective date of reduction of his or her educational assistance is the last day of the month in which the divorce occurs.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98–525)

(d) *Dependent child.* If the veteran's award of educational assistance must be reduced because his or her dependent child ceases to be dependent, the effective date of reduction will be as follows.

(1) If the veteran's child marries, the effective date of reduction will be the last day of the month in which the marriage occurs.

(2) If the veteran's child reaches age 18, the effective date of reduction will be the day preceding the dependent child's 18th birthday.

(3) If the veteran is receiving additional educational assistance based on a child's school attendance between the child's 18th and 23rd birthdays, the effective date of reduction of the veteran's educational assistance will be the last day of the month in which the dependent child stops attending school, or the day before the dependent child's 23rd birthday, whichever is earlier.

(4) If the veteran is receiving additional educational assistance because his or her child is helpless, the effective date of reduction will be the last day of the month following 60 days after VA notifies the veteran that the dependent child's helplessness has ceased.

(Authority: 38 U.S.C. 5112(b) 5113; Pub. L. 98–525)

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from.* (1) If the veteran or servicemember, for reasons other than being called or ordered to active duty, withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances, VA will terminate or reduce educational assistance effective the first date of the term

in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(Authority: 38 U.S.C. 3680(a); Pub. L. 102–127)(Aug. 1, 1990))

(2) If the veteran or servicemember withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses or the veteran withdraws from all courses because he or she is ordered to active duty, VA will terminate educational assistance for—

(i) Residence training: last date of attendance; and

(ii) Independent study: official date of change in status under the practices of the educational institution.

(3) When a veteran or servicemember withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a veteran or servicemember withdraws from an apprenticeship or other on-the-job training, VA will terminate educational assistance effective the date of last training.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525, Pub. L. 99–576)

(5) When a veteran or servicemember withdraws from a flight course, VA will terminate educational assistance effective the date of last instruction.

(Authority: 38 U.S.C. 3034(f))

(f) *Reduction in the rate of pursuit of the course.* If the veteran or servicemember reduces the rate of training by withdrawing from part of a course, but continues training in part of the course, the provisions of this paragraph apply.

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the veteran's or servicemember's educational assistance effective the date on which the withdrawal occurs when either:

(i) A nonpunitive grade is assigned for the part of the course from which he or she withdraws; and

(A) The veteran or servicemember withdraws because he or she is ordered to active duty; or

(B) The withdrawal occurs with mitigating circumstances; or

(ii) A punitive grade is assigned for the part of the course from which the reservist withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) The veteran or servicemember—

(A) Receives a nonpunitive grade for the part of the course from which he or she withdraws; and

(B) Withdraws without mitigating circumstances; and

(C) Does not withdraw because he or she is ordered to active duty.

(Authority: 38 U.S.C. 3680(a))

(3) A veteran or servicemember, who enrolls in several subjects and reduces his or her rate of pursuits by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of §21.7140(d) are met. If those requirements are not met, VA will reduce the individual's educational assistance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 3034, 3680(a), 5113(b))

(g) *End of course or period of enrollment.* If a veteran's or servicemember's course or period of enrollment ends, the effective date of reduction or discountinuance of his or her award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution.

(Authority: 38 U.S.C. 3034(b), 3680; Pub. L. 98–525)

(h) *Nonpunitive grade.* (1) If the veteran or servicemember does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the

grade applies, when no mitigating circumstances are found.

(2) If an individual does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, VA will reduce his or her educational assistance effective the last date of attendance when mitigating circumstances are found.

(3) If an individual receives a nonpunitive grade through nonattendance in a particular course, VA will reduce the individual's educational assistance effective the last date of attendance when mitigating circumstances are found.

(4) If an individual receives a nonpunitive grade through nonattendance in a particular course, VA will reduce the individual's educational assistance effective the first date of enrollment in which the grade applies, when no mitigating circumstances are found.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98–525)

(i) *Discontinued by VA.* If VA discontinues payment to a veteran or servicemember following the procedures stated in §§ 21.4215(d) and 21.4216, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance was preceded by such a suspension.

(2) End of the month in which the decision to discontinue, made by VA under § 21.7133 or § 21.4215(d), is effective, if the Director of a VA facility did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98–525)

(j) *Disapproval by State approving agency.* If a State approving agency disapproves a course in which a veteran or servicemember is enrolled, the date of discontinuance of payment of educational assistance will be—

(1) Date on which payments first were suspended by the Director of a VA Regional Processing Office as provided in § 21.4210, if disapproval was preceded by such a suspension.

(2) End of the month in which disapproval is effective or VA receives notice of the disapproval, whichever is later, provided that the Director of a VA Regional Processing Office did not suspend payments before the disapproval

(Authority: 38 U.S.C. 3034, 3672(a), 3690; Pub. L. 98–525)

(k) *Disapproval by VA.* If VA disapproves a course in which a veteran or servicemember is enrolled, the effective date of discontinuance of payment of educational assistance will be—

(1) The date on which the Director of a VA Regional Processing Office first suspended payments, as provided in § 21.4210, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA Regional Processing Office did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034, 3671(b), 3672(a), 3690; Pub. L. 98–525)

(l) *Unsatisfactory progress, conduct or attendance.* If a veteran's or servicemember's progress, conduct or attendance is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the veteran's or servicemember's enrollment, or

(2) The date on which the veteran's or servicemember's progress, conduct or attendance becomes unsatisfactory according to the educational institution's regularly established standards of progress, conduct or attendance.

(Authority: 38 U.S.C. 3034, 3474)

(m) *Required certifications not received after certification of enrollment.* If VA does not timely receive the veteran's or servicemember's certification of attendance or does not timely receive the educational institution's endorsement of the certification or the educational institution's certification of attendance or pursuit, VA will assume that the veteran or servicemember has withdrawn. VA will apply the provisions of paragraph (e) of this section. VA considers the receipt of a certificate of attendance to be timely if it is

received within 60 days of the last day of the month for which attendance is to be certified.

(Authority: 38 U.S.C. 3034(b); Pub. L. 98–525)

(n) *False or misleading statements*. If educational assistance is paid as the result of false or misleading statements, see §21.7158:

(Authority: 38 U.S.C. 3034, 3690; Pub. L. 98–525)

(o) *Conflicting interests (not waived)*. If an educational institution and VA have conflicting interests as provided in §21.4005 and §21.7305, and VA does not grant the veteran a waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the veteran.

(Authority: 38 U.S.C. 3034, 3683, Pub. L. 98–525)

(p) *Incarceration in prison or penal institution for conviction of a felony*. (1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under §21.7139 (c) and (d).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or servicemember's tuition and fees were paid by a Federal, State or local program.

(ii) The date the veteran or servicemember is incarcerated in prison or penal institution, or

(iii) The comencing date of the award as determined by §21.7131.

(Authority: 38 U.S.C. 3034, 3482(g); Pub. L. 98–525)

(q) *Active duty*. If a veteran reenters on active duty, the effective date of reduction of his or her award of educational assistance shall be the day before the veteran's entrance on active duty. (This reduction does not apply to brief periods of active duty for training if the educational institution permits absence for active duty for training without considering the veteran's pursuit of a program of education to be interrupted).

(Authority: 38 U.S.C. 3032)

(r) *Record-purpose charge against entitlement under 38 U.S.C. chapter 34 equals entitlement that remained on December 31, 1989*. An individual, who is receiving basic educational assistance at the rates stated in §21.7137(a), will have his or her award reduced to the rates found in §21.7136(a) effective the date the total of the individual's record-purpose charges against his or her entitlement under 38 U.S.C. chapter 34 equals the entitlement to that benefit which the individual had on December 31, 1989.

(Authority: 38 U.S.C. 30159(c); Pub. L. 98–525)

(s) *Exhaustion of entitlement under 38 U.S.C. chapter 30*. (1) If an individual who is enrolled in an educational institution regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30, the discontinuance date shall be the last day of the quarter or semester in which entitlement is exhausted.

(2) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30 after more than half of the course is completed, the discontinuance date shall be the earlier of the following:

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30 before completing the major portion of the course, the discontinuance date will be the date the entitlement is exhausted.

(Authority: 38 U.S.C. 3031(e); Pub. L. 98–525)

(t) *Eligibility expires*. If the veteran is pursuing a course on the date of expiration of eligibility as determined under §21.7050 or §21.7051 VA will discontinue educational assistance effective the day preceding the end of the eligibility period.

(Authority: 38 U.S.C. 3034(a); Pub. L. 98–525)

(u) *Veteran fails to participate satisfactorily in the Selected Reserve.* If a veteran is attempting to establish eligibility through service on active duty combined with service in the Selected Reserve, and he or she fails to participate satisfactorily in the Selected Reserve before completing the required service in the Selected Reserve, the effective date of reduction of the award of educational assistance will be the date the Secretary determines that he or she failed to participate satisfactorily.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525)

(v) *Error-payee's or administrative.* (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the date on which the award would have ended had the act not occurred.

(2) When VA, the Department of Defense, or the Department of Transportation makes an administrative error or an error in judgment that is the sole cause of an erroneous award, VA must reduce or terminate the award effective the date of last payment.

(Authority: 38 U.S.C. 5112(b), 5113)

(w) *Forfeiture for fraud.* If a veteran's or servicemember's educational assistance must be forfeited due to fraud, the effective date of discontinuance shall be the later of—

(1) The effective date of the award, or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 6103; Pub. L. 98–525)

(x) *Forfeiture for treasonable acts or subversive activities.* If a veteran's or servicemember's educational assistance must be forfeited due to treasonable acts or subversive activities, the effective date of discontinuance shall be the later of—

(1) The effective date of the award, or

(2) The date before the date the veteran or servicemember committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 6104, 6105; Pub. L. 98–525)

(y) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue, VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the veteran's or servicemember's educational assistance.

(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98–525)

(z) *Independent study course loses accreditation.* Except as otherwise provided in § 21.7120(d), if the veteran or servicemember is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3014, 3034, 3676, 3680A(a))

(aa) *Fugitive felons.* (1) VA will not award educational assistance allowance to an otherwise eligible veteran for any period after December 26, 2001, during which the veteran is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a veteran who is a fugitive felon is the later of—

(i) The date of the warrant for the arrest of the felon; or

(ii) December 27, 2001.

(2) VA will not award educational assistance allowance to a dependent who is otherwise eligible to transferred entitlement if the dependent is a fugitive felon or if the veteran who transferred the entitlement is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a dependent is the later of—

(i) The date of the warrant; or

(ii) December 27, 2001.

(Authority: 38 U.S.C. 5313B)

(bb) *Reduction following loss of increase (''kicker'') for Selected Reserve*

*service*. If a veteran is entitled to an increase (''kicker'') in the monthly rate of basic educational assistance as provided in §21.7136(g) or §21.7137(e), due to service in the Selected Reserve, and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the veteran is no longer entitled to the increase (''kicker'').

(Authority: 10 U.S.C. 16131)

(cc) *Except as otherwise provided*. If a veteran's or servicemember's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of discontinuance of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98–525)

(dd) *Dependent exhausts transferred entitlement*. The discontinuance date of an award of educational assistance to a dependent, who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3020)

(ee) *Transferor revokes transfer of entitlement*. If the transferor revokes a transfer of entitlement, the dependent's date of discontinuance is the effective date of the revocation of transfer as determined under §21.7080(g)(2).

(Authority: 38 U.S.C. 3020)

(ff) *Transferor fails to complete additional active duty service requirement*. VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement to educational assistance; and

(2) The service department discharges the transferor for a reason other than one of the reasons stated in §21.7080(m)(1).

(Authority: 38 U.S.C. 3020)

(gg) *Spouse eligible for transferred entitlement and transferor divorce*. If a spouse eligible for transferred entitlement and the transferor divorce, the spouse's discontinuance date is the date of the divorce.

(Authority: 38 U.S.C. 101(31), 103, 3020)

(hh) *Child eligible for transferred entitlement marries*. If a child eligible for transferred entitlement marries, the date of discontinuance is the date the child marries.

(Authority: 38 U.S.C. 101(4), 3020)

(ii) *Stepchild eligible for transferred entitlement no longer member of transferor's household*. If a stepchild eligible for transferred entitlement ceases to be a member of the transferor's household, the date of discontinuance is the date the stepchild was no longer a member of the transferor's household. See §21.7080(c)(4).

(Authority: 38 U.S.C. 101(4), 3020)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 57 FR 15024, Apr. 24, 1992; 58 FR 26242, May 3, 1993; 61 FR 6788, Feb. 22, 1996; 61 FR 26116, May 24, 1996; 62 FR 55519, Oct. 27, 1997; 63 FR 35837, July 1, 1998; 64 FR 38577, July 19, 1999; 64 FR 51901, Sept. 27, 1999; 66 FR 38939, July 26, 2001; 66 FR 42586, Aug. 13, 2001; 70 FR 25787, May 16, 2005; 71 FR 75677, Dec. 18, 2006; 72 FR 16981, Apr. 5, 2007]

### §21.7136 Rates of payment of basic educational assistance.

The monthly rate of educational assistance payable to a veteran or servicemember depends in part upon the service requirements he or she met to establish eligibility for that educational assistance.

(a) *Service requirements for higher rates*. The monthly rate of basic educational assistance payable to a veteran or servicemember shall be the rate stated in paragraph (b) of this section when—

(1) The veteran has established eligibility for educational assistance under §21.7045; or

(2) The veteran has established eligibility under § 21.7042, and one of the following sets of circumstances exist.

(i) The veteran's qualifying obligated period of active duty is at least three years; or

(ii) The veteran's qualifying obligated period of active duty is at least two years and less than three years and either the veteran has served or is committed to serve in the Selected Reserve for a period of at least four years, or the veteran was committed to serve in the Selected Reserve for a period of at least four years but failed to complete four years service for one of the reasons stated in § 21.7042(b)(7)(i) or (iii); or

(iii) The veteran's qualifying obligated period of active duty is at least two years and less than three years and—

(A) The basic educational assistance is payable for training received after August 31, 1993;

(B) The veteran's continuous active duty service beginning on the date of the commencement of his or her qualifying obligated period of active duty is at least three years and upon completion of that continuous period of active duty the veteran either—

(*1*) Continues on active duty; or

(*2*) Is discharged from active duty with an honorable discharge; or

(*3*) Is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, placed on the temporary disability retired list; or

(*4*) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 3015(a))

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, basic educational assistance is payable to a veteran whose service is described in paragraph (a) of this section at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Training | Monthly rate |
|---|---|
| Full time | $1034.00 |
| ¾ time | 775.50 |
| ½ time | 517.00 |
| Less than ½ but more than ¼ time | 517.00 |
| ¼ time | 258.50 |

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Training | Monthly rate |
|---|---|
| Full time | $1075.00 |
| ¾ time | 806.25 |
| ½ time | 537.50 |
| Less than ½ but more than ¼ time | 537.50 |
| ¼ time | 268.75 |

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

| Training | Monthly rate |
|---|---|
| Full time | $1101.00 |
| ¾ time | 825.75 |
| ½ time | 550.50 |
| Less than ½ but more than ¼ time | 550.50 |
| ¼ time | 275.25 |

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, basic educational assistance is payable to the veteran for pursuit of apprenticeship or other on-job training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Training period | Monthly rate |
|---|---|
| First six months of training | $878.90 |
| Second six months of training | 672.10 |
| Remaining pursuit of training | 465.30 |

(Authority: 38 U.S.C. 3015, 3032(c))

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Training period | Monthly rate |
|---|---|
| First six months of training | $913.75 |
| Second six months of training | 698.75 |
| Remaining pursuit of training | 483.75 |

(Authority: 38 U.S.C. 3015, 3032(c))

(iii) For training that occurs after September 30, 2007, and before January 1, 2008:

| Training period | Monthly rate |
|---|---|
| First six months of training | $935.85 |
| Second six months of training | 715.65 |
| Remaining pursuit of training | 495.45 |

(Authority: 38 U.S.C. 3015, 3032(c))

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

| Training period | Monthly rate |
|---|---|
| First six months of training | $825.75 |
| Second six months of training | 605.55 |
| Remaining pursuit of training | 385.35 |

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is—

(i) $1034.00 for training that occurs after September 30, 2005, and before October 1, 2006;

(ii) $1075.00 for training that occurs after September 30, 2006, and before October 1, 2007; and

(iii) $1101.00 for training that occurs after September 30, 2007, and before August 1, 2008.

(Authority: 38 U.S.C. 3015)

(c) *Rates for some veterans whose qualifying obligated period of active duty is less than three years.* If a veteran has established eligibility under §21.7042, but the veteran's service is not described in paragraph (a)(2) of this section, the monthly rate of educational assistance payable to the veteran will be determined by this paragraph.

(1) Except as elsewhere provided in this section or in §21.7139, basic educational assistance is payable to a veteran at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Training period | Monthly rate |
|---|---|
| Full time | $840.00 |
| ¾ time | 630.00 |
| ½ time | 420.00 |
| Less than ½ but more than ¼ time | 420.00 |
| ¼ time or less | 210.00 |

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Training period | Monthly rate |
|---|---|
| Full time | $873.00 |
| ¾ time | 654.75 |
| ½ time | 436.50 |
| Less than ½ but more than ¼ time | 436.50 |
| ¼ time or less | 218.25 |

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

| Training period | Monthly rate |
|---|---|
| Full time | $894.00 |
| ¾ time | 670.50 |
| ½ time | 447.00 |
| Less than ½ but more than ¼ time | 447.00 |
| ¼ time or less | 223.50 |

(Authority: 38 U.S.C. 3015)

(2) Basic educational assistance is payable to a veteran for pursuit of apprenticeship or other on-job training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Training period | Monthly rate |
|---|---|
| First six months of training | $714.00 |
| Second six months of training | 546.00 |
| Remaining pursuit of training | 378.00 |

(Authority: 38 U.S.C. 3015, 3032(c))

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Training period | Monthly rate |
|---|---|
| First six months of training | $742.05 |
| Second six months of training | 567.45 |
| Remaining pursuit of training | 392.85 |

(Authority: 38 U.S.C. 3015, 3032(c))

(iii) For training that occurs after September 30, 2007, and before January 1, 2008:

| Training period | Monthly rate |
|---|---|
| First six months of training | $759.90 |
| Second six months of training | 581.10 |
| Remaining pursuit of training | 402.30 |

(Authority: 38 U.S.C. 3015, 3032(c))

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

| Training period | Monthly rate |
|---|---|
| First six months of training | $670.50 |
| Second six months of training | 491.70 |
| Remaining pursuit of training | 312.90 |

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is

(i) $840.00 for training that occurs after September 30, 2005, and before October 1, 2006;

(ii) $873.00 for training that occurs after September 30, 2006, and before October 1, 2007; and

(iii) $894.00 for training that occurs after September 30, 2007, and before August 1, 2008.

(Authority: 38 U.S.C. 3015)

(d) *Increase in basic educational assistance rates (''kicker'').* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but (except as provided in paragraphs (f) and (g) of this section)—

(1) For individuals, who first become members of the Armed Forces before November 29, 1989, (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training) it may not exceed:

(i) $400 per month for full-time training,

(ii) $300 per month for three-quarter-time training,

(iii) $200 per month for one-half-time training, or for training which is less than one-half, but more than one-quarter-time, or

(iv) $100 per month for one-quarter-time training or less.

(2) For individuals, who become members of the Armed Forces during the period beginning November 29, 1989 and ending September 30, 1998 (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training), it may not exceed:

(i) $700 per month for full-time training,

(ii) $525 per month for three-quarter-time training,

(iii) $350 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) $175 per month for one-quarter-time training or less.

(3) For individuals, who first become members of the Armed Forces after September 30, 1998, (other than those pursuing apprenticeship or other on-job training), it may not exceed:

(i) $950.00 per month for full-time training,

(ii) $712.50 per month for three-quarter-time training,

(iii) $475.00 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) $237.50 per month for one-quarter-time training or less.

(Authority: 38 U.S.C. 3015, 3032)

(4) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing an apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed $300 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $340 per month.

(ii) During the second 6 months of training the increase may not exceed $220 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $260 per month.

(iii) During the remaining months of training the increase may not exceed $140 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $180 per month.

(5) For individuals who first become members of the Armed Forces during the period beginning November 29, 1989, and ending September 30, 1998, and who are pursuing an apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed $525 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $595 per month.

(ii) During the second 6 months of training the increase may not exceed $385 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $455 per month.

(iii) During the remaining months of training the increase may not exceed $245 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $315 per month.

(6) For individuals who first become members of the Armed Forces after September 30, 1998, and who are pursuing apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed $712.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $807.50 per month.

(ii) During the second 6 months of training the increase may not exceed $522.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $617.50 per month.

(iii) During the remaining months of training the increase may not exceed $332.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed $427.50 per month.

(Authority: 38 U.S.C. 3015, 3032; sec. 103, Pub. L. 108–454, 118 Stat. 3600)

(7) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing cooperative training, it may not exceed $320 per month for training received before October 9, 1996.

(8) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing cooperative training, it may not exceed $560 per month for training received before October 9, 1996.

(Authority: Sec. 108(a)(2), Pub. L. 100–689, 102 Stat. 4170; Sec. 5(a), Pub. L. 102–83, 105 Stat. 406)

(e) *Less than one-half-time training and rates for servicemembers.* Except as provided in paragraph (g) or (h) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of:

(1) The monthly rate stated in either paragraph (b) or (c) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (d) or (f) of this section, or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

(Authority: 38 U.S.C. 3015, 3032)

(f) *Increase in basic educational assistance rates ("kicker") for those eligible under §21.7045.* A veteran who formerly was eligible to receive educational assistance under 38 U.S.C. ch. 32, and becomes eligible for educational assistance under 38 U.S.C. ch. 30 as described in §21.7045(b)(1)(ii), (c)(1)(ii), (d), or (e),

may receive an increase in basic educational assistance allowance (kicker). The increase will be determined as follows.

(1) The basis of the increase will be that portion of the amount of money—

(i) Which remains in the VEAP fund after the veteran has been paid all assistance due him or her under 38 U.S.C. ch. 32 and refunded all of his or her contributions to the VEAP fund, and—

(ii) Which represents the Secretary of Defense's additional contributions for the veteran as stated in § 21.5132(b)(3) of this part.

(2) For a student pursuing a program of education by residence training—

(i) VA will determine the monthly rate of the increase by dividing the amount of money described in paragraph (f)(1) of this section by the number of months of entitlement to educational assistance under 38 U.S.C. chapter 30 which the veteran has at the time his eligibility for benefits under 38 U.S.C. chapter 30 is first established;

(ii) VA will use the monthly rate of the increase determined in paragraph (f)(2)(i) of this section if the veteran is pursuing his or her program full time;

(iii) VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section by .75 for a student pursuing his or her program three-quarter time;

(iv) VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section by .5 for a student pursuing his or her program half time; and

(v) VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section by .25 for a student pursuing his or her program less than one-half time.

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (f)(2)(i) of this section by .8 for training received before October 9, 1996.

(4) For a veteran pursuing a program of apprenticeship or other on-job training—

(i) During periods before October 1, 2005, and after December 31, 2007, VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section—

(A) By .75 for a veteran in the first six months of pursuit of training,

(B) By .55 for a veteran in the second six months of pursuit of training, or

(C) By .35 for a veteran in the remaining months of pursuit of training.

(ii) During the period beginning October 1, 2005, and ending December 31, 2007, VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section—

(A) By .85 for a veteran in the first six months of pursuit of training,

(B) By .65 for a veteran in the second six months of pursuit of training, or

(C) By .45 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e); sec. 103, Pub. L. 108–454, 118 Stat. 3600)

(g) *Increase (''kicker'') in basic educational assistance rates payable for service in the Selected Reserve.* (1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase (''kicker'') is payable to an individual, who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for education under § 21.7042(a), § 21.7045, or § 21.7080; and

(ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned—

(i) Will, for such an increase (''kicker''), set an amount of the increase (''kicker'') for full-time training, but the increase (''kicker'') may not exceed $350 per month; and

(ii) May set the amount of the increase (''kicker'') payable, for an individual pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))

(h) *Increase in monthly rates due to contributions.* Effective May 1, 2001, a servicemember who establishes eligibility under § 21.7042(a), (b), or (c) may

contribute up to $600 to the Secretary of the military department concerned in multiples of $20.

(1) VA will increase the monthly rate provided in paragraphs (b)(1) through (b)(4) and (c)(1) through (c)(4) of this section by:

(i) $5 for every $20 an individual pursuing a program of education full time has contributed;

(ii) $3.75 for every $20 an individual pursuing a program of education three-quarter time has contributed;

(iii) $2.50 for every $20 an individual pursuing a program of education half time or less than one-half time but more than one-quarter time has contributed; and

(iv) $1.25 for every $20 an individual pursuing a program of education one-quarter time has contributed.

(2) If a veteran is pursuing apprenticeship or other on-job training—

(i) During periods before October 1, 2005, and after December 31, 2007, VA will increase the veteran's monthly educational assistance that is otherwise payable—

(A) During the first 6 months of pursuit of training, by $3.75 for every $20 the veteran contributed,

(B) During the second 6 months of pursuit of training, by $2.75 for every $20 the veteran contributed, or

(C) During the remaining months of the veteran's pursuit of training, by $1.75 for every $20 the veteran contributed.

(ii) During the period beginning October 1, 2005, and ending December 31, 2007, VA will increase the veteran's monthly educational assistance that is otherwise payable—

(A) During the first 6 months of pursuit of training, by $4.25 for every $20 the veteran contributed,

(B) During the second 6 months of pursuit of training, by $3.25 for every $20 the veteran contributed, or

(C) During the remaining months of the veteran's pursuit of training, by $2.25 for every $20 the veteran contributed.

(3) VA will increase the monthly rate provided in paragraphs (b)(9) or (c)(9) of this section by $5 for every $20 the veteran has contributed.

(Authority: 38 U.S.C. 3015(g); sec. 103, Pub. L. 108–454, 118 Stat. 3600)

[55 FR 28386, July 11, 1990]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.7136, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

### §21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, basic educational assistance is payable to individuals with remaining entitlement under 38 U.S.C. chapter 34 at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| Full time | $1222.00 | $1258.00 | $1289.00 | $16.00 |
| ¾ time | 917.00 | 943.50 | 967.00 | 12.00 |
| ½ time | 611.00 | 629.00 | 644.50 | 8.50 |
| Less than ½ but more than ¼ time | 611.00 | 611.00 | 611.00 | 0 |
| ¼ time or less | 305.50 | 305.50 | 305.50 | 0 |

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| Full time | $1263.00 | $1299.00 | $1330.00 | $16.00 |
| ¾ time | 947.75 | 974.25 | 997.75 | 12.00 |
| ½ time | 631.50 | 649.50 | 665.00 | 8.50 |
| Less than ½ but more than ¼ time | 631.50 | 631.50 | 631.50 | 0 |
| ¼ time or less | 315.75 | 315.75 | 315.75 | 0 |

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| Full time | $1289.00 | $1325.00 | $1356.00 | $16.00 |
| ¾ time | 967.25 | 993.75 | 1017.25 | 12.00 |
| ½ time | 644.50 | 662.50 | 678.00 | 8.50 |
| Less than ½ but more than ¼ time | 644.50 | 644.50 | 644.50 | 0 |
| ¼ time or less | 322.25 | 322.25 | 322.25 | 0 |

(Authority: 38 U.S.C. 3015)

(2) For veterans pursuing apprenticeship or other on-job training, basic educational assistance is payable for training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| 1st six months of pursuit of program | $995.35 | $1009.38 | $1021.70 | $5.95 |
| 2nd six months of pursuit of program | 738.73 | 749.78 | 758.88 | 4.55 |
| 3rd six months of pursuit of program | 495.90 | 503.78 | 509.85 | 3.15 |
| Remaining pursuit of program | 480.60 | 488.03 | 494.78 | 3.15 |

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| 1st six months of pursuit of program | $1030.20 | $1044.23 | $1056.55 | $5.95 |
| 2nd six months of pursuit of program | 765.38 | 776.43 | 785.53 | 4.55 |
| 3rd six months of pursuit of program | 514.35 | 522.23 | 528.30 | 3.15 |
| Remaining pursuit of program | 499.05 | 506.48 | 513.23 | 3.15 |

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007 and before January 1, 2008:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| 1st six months of pursuit of program | $1052.30 | $1066.33 | $1078.65 | $5.95 |
| 2nd six months of pursuit of program | 782.28 | 793.33 | 802.43 | 4.55 |
| 3rd six months of pursuit of program | 526.05 | 533.93 | 540.00 | 3.15 |
| Remaining pursuit of program | 510.75 | 518.18 | 524.93 | 3.15 |

(Authority: 38 U.S.C. 3015)

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

| Training | Monthly rate | | | |
|---|---|---|---|---|
| | No dependents | One dependent | Two dependents | Additional for each additional dependent |
| 1st six months of pursuit of program | $928.50 | $940.88 | $951.75 | $5.25 |
| 2nd six months of pursuit of program | 661.93 | 671.28 | 678.98 | 3.85 |
| 3rd six months of pursuit of program | 409.15 | 415.28 | 420.00 | 2.45 |
| Remaining pursuit of program | 397.25 | 403.03 | 408.28 | 2.45 |

(Authority: 38 U.S.C. 3015)

(3) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is the rate stated in the following tables:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

| Monthly rate | | | |
|---|---|---|---|
| No dependents | One dependent | Two dependents | Additional for each additional dependent |
| $1222.00 | $1258.00 | $1289.00 | $16.00 |

(Authority: 38 U.S.C. 3015)

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

| Monthly rate | | | |
|---|---|---|---|
| No dependents | One dependent | Two dependents | Additional for each additional dependent |
| $1263.00 | $1299.00 | $1330.00 | $16.00 |

(Authority: 38 U.S.C. 3015)

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

| Monthly rate | | | |
|---|---|---|---|
| No dependents | One dependent | Two dependents | Additional for each additional dependent |
| $1289.00 | $1325.00 | $1356.00 | $16.00 |

(Authority: 38 U.S.C. 3015)

(b) *Less than one-half-time training.* Except as provided in paragraph (d) of this section, the monthly rate of basic educational assistance for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

(1) The monthly rate in paragraph (a)(1) of this section, or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

(Authority: 38 U.S.C. 3032; Pub. L. 98–525, Pub. L. 99–576)

(c) *Rates for servicemembers.* Except as provided in paragraph (d) of this section, the monthly rate of basic educational assistance for a servicemember may not exceed the lesser of:

(1) The monthly rate stated in paragraph (a) of this section; or

(2) The monthly rate of the cost of the course. If there is no cost for the

course, educational assistance is not payable.

(Authority: 38 U.S.C. 3015)

(d) *Increase (''kicker'') in basic educational assistance rates for service in the Selected Reserve.* (1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraphs (a), (b), or (c) of this section, as appropriate. The increase (''kicker'') is payable to an individual who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for educational assistance under § 21.7044(a) or § 21.7080;

(ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned—

(i) Will, for such an increase, set the amount of the increase (''kicker'') payable for full-time training, but the increase (''kicker'') may not exceed $350 per month;

(ii) May set the amount of the ''kicker'' payable, for a veteran pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (e)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))

(e) *Concurrent benefits.* VA may pay additional educational assistance to a veteran for a dependent concurrently with additional pension or compensation for the same dependent.

(Authority: 38 U.S.C. 3015(d), Pub. L. 98–525)

(f) *Two veteran cases.* VA may pay additional educational assistance to a veteran for a spouse who is also a veteran. This will not bar the payment of additional educational assistance or subsistence allowance under § 21.260 of this part to the spouse for the veteran. If the veteran is paid additional educational assistance for a child, that will not bar payment of additional educational assistance or subsistence allowance under § 21.260 of this part to the spouse for the same child.

(Authority: 38 U.S.C. 3015(d); Pub. L. 98–525)

[53 FR 1757, Jan. 22, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.7137, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

### § 21.7138 Rates of supplemental educational assistance.

In addition to basic educational assistance, a veteran or servicemember who is eligible for supplemental educational assistance and entitled to it shall be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.7139 of this part.

(a) *Rates for veterans.* (1) Except for a veteran pursuing apprenticeship or other on-job training, the rate of supplemental educational assistance payable to a veteran is at least the rate stated in this table.

| TRAINING | MONTHLY RATE |
|---|---|
| Full time | $300. |
| ¾ time | 225. |
| ½ time | 150. |
| Less than ½ but more than ¼ time. | 150 See paragraph (c). |
| ¼ time or less | 75 See paragraph (c). |
| Cooperative | 240. |

(Authority: 38 U.S.C. 3015(d), 3022, 3032(d); Pub. L. 98–525, Pub. L. 100–689) (Jan. 1, 1989)

(2) For a veteran pursuing apprenticeship or other on-job training the rate of supplemental educational assistance payable to a veteran is as provided in this table.

| Training period | Monthly rate |
|---|---|
| First 6 months of pursuit of program. | $225.00 |
| Second 6 months of pursuit of program. | 165.00 |
| Remaining pursuit of program | 105.00 |

(Authority: 38 U.S.C. 3015(c), 3032(c); Pub. L. 99–576)

(b) *Increase in supplemental educational assistance rates (''kicker'').* The Secretary concerned may increase the amount of supplemental educational assistance payable to an individual

who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but—

(1) For an individual other than one pursuing an apprenticeship or other on-job training or cooperative training it may not exceed—

(Authority: 38 U.S.C. 3032(d)) (Jan. 1, 1989)

(i) $300 per month for full-time training.

(ii) $225 per month for three-quarter-time training,

(iii) $150 per month for one-half-time training and for training which is less than one-half-time, but more than one-quarter-time, or

(iv) $75 per month for one-quarter-time training or less.

(2) For an individual pursuing an apprenticeship or other on-job training it may not exceed—

(i) $225 per month for the first six months of training,

(ii) $165 per month for the second six months of training, and

(iii) $105 per month for the remaining months of training.

(Authority: 38 U.S.C. 3022(b), 3032(c); Pub. L. 99–576)

(3) For an individual pursuing cooperative training, it may not exceed $240 per month.

(Authority: 38 U.S.C. 3022(b), 3032(d)) (Jan. 1, 1989)

(c) *Rates of supplemental educational assistance for less than one-half-time training and for servicemembers.* The monthly rate of supplemental educational assistance payable to a veteran who is training less than half-time or to a servicemember is determined as follows:

(1) The monthly rate of the veteran's or servicemember's basic educational assistance determined as provided in §§21.7136(e) and 21.7137(b), (c) and (d) of this part.

(2) If the monthly rate of basic educational assistance equals or is greater than the monthly rate of the cost of the course, no supplemental educational assistance is payable.

(3) If the monthly rate of basic educational assistance is less than monthly rate of the cost of the course, the monthly rate of supplemental educational assistance is the lesser of—

(i) The monthly rate provided in paragraph (a) of this section, plus the monthly rate provided in paragraph (b) of this section, if appropriate, or

(ii) The difference between the monthly rate of the cost of the course and the monthly rate of the veteran's or servicemember's basic educational assistance.

(Authority: 38 U.S.C. 3022, 3032; Pub. L. 98–525)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136, May 2, 1991; 71 FR 75678, Dec. 18, 2006]

### §21.7139 Conditions which result in reduced rates or no payment.

The monthly rates established in §§21.7136, 21.7137 and 21.7138 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Withdrawal from a course or receipt of a nonpunitive grade affects payments to a veteran or servicemember. VA will not pay benefits to a veteran or servicemember for pursuit of a course from which the veteran or servicemember withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.

(1) The veteran withdraws because he or she is ordered to active duty; or

(2) All of the following exist.

(i) There are mitigating circumstances; and

(ii) The veteran or servicemember submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the veteran or servicemember that he or she must submit a description of the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The veteran or servicemember submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98–525, Pub. L. 102–127)(Aug. 1, 1990)

(b) *No educational assistance for some incarcerated veterans or servicemembers.* VA will pay no educational assistance to a veteran or servicemember, who—

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 38 U.S.C. 3034, 3482(g))

(c) *Reduced educational assistance for some incarcerated servicemembers.* (1) VA will pay reduced educational assistance to a servicemember who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by VA) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance payable to a servicemember described in this paragraph shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of any charges to the servicemember for the cost of necessary supplies, books and equipment;

(ii) The monthly rate of the portion of the tuition and fees paid by the servicemember plus the monthly rate of the portion of tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in § 21.7136(e) or § 21.7137(c), as appropriate.

(Authority: 38 U.S.C. 3034, 3482(g))

(d) *Reduced educational assistance for some incarcerated veterans.* (1) VA will pay reduced educational assistance to a veteran who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course for which the veteran pays some (but not all) of the charges for tuition and fees, or for which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a one-half time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(ii) If the veteran has remaining entitlement under 38 U.S.C. chapter 34, monthly rate stated in § 21.7137(a) for a veteran with no dependents and the increase provided in § 21.7137(d) or (e), if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance, or

(iii) If the veteran has no entitlement under 38 U.S.C. chapter 34, the monthly rate stated in § 21.7136 (a) or (b), as appropriate, and the increase provided in § 21.7136(d), (f), or (g), if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance.

(3) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a less than one-half time basis or on a one-quarter time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate determined by §21.7136(e) or §21.7137(b), as appropriate, plus the monthly rate stated in §21.7138(c) if the veteran is entitled to supplemental educational assistance.

(Authority: 38 U.S.C. 3034, 3482(g))

(e) *Payment for correspondence courses.* The amount of payment due a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course is 55 percent of the established charge which the educational institution requires non-veterans to pay for the lessons that the veteran or servicemember has had completed and serviced and for which payment is due.

(Authority: 38 U.S.C. 3034, 3686(a)(2))

(f) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in §§21.7136(b)(2), (c)(2), (d)(4) through (d)(6), (f)(4), and (h)(2) and 21.7137(a)(2); and

(ii) Any increase (''kicker'') set by the Secretary of the service department concerned as described in §§21.7136(g) and 21.7137(d).

(2) In making the computations required by paragraph (g)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(3) For the purpose of this paragraph ''hours worked'' include only—

(i) The training hours the veteran worked, and

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See §21.4270(c), footnote 5, as to the requirements for full-time training.)

(Authority: 38 U.S.C. 3034, 3687(b)(3)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 11672, Mar. 20, 1991; 57 FR 15025, Apr. 24, 1992; 58 FR 26242, May 3, 1993; 60 FR 32272, June 21, 1995; 62 FR 55520, Oct. 27, 1997; 71 FR 75678, Dec. 18, 2006; 73 FR 65269, Nov. 3, 2008]

### §21.7140 Certifications and release of payments.

(a) *Advance payments and lump-sum payments.* VA will apply the provisions of §21.4138(a) and (b) in making advance payments and lump-sum payments to veterans and servicemembers.

(Authority: 38 U.S.C. 3034 and 3680)

(b) *Accelerated payments.* VA will apply the provisions of §§21.7151(a), (c), and 21.7154(d) in making accelerated payments.

(Authority: 38 U.S.C. 3014A)

(c) *Other payments.* Except for an individual who is seeking tuition assistance top-up, an individual must be pursuing a program of education in order to receive payments of educational assistance under 38 U.S.C. chapter 30. To ensure that this is the case, the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking tuition assistance top-up;, one seeking reimbursement for taking an approved licensing or certification test; one who qualifies for an advance payment; one who qualifies for an accelerated payment; or one who qualifies for a lump sum payment) only after:

(i) The educational institution has certified his or her enrollment as provided in §21.7152; and

(ii) VA has received from the individual a verification of the enrollment.

(Authority: 38 U.S.C. 3680(g), 3689)

(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.7152; and

(ii) VA has received from the veteran and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course only after-

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.

(Authority: 38 U.S.C. 3034, 3680(b))

(4) VA will pay educational assistance to a veteran or servicemember as reimbursement for taking an approved licensing or certification test only after the veteran or servicemember has submitted to VA a copy of the veteran's or servicemember's official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the veteran or servicemember took the test; and

(iv) The cost of the test.

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

(5) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. If the form(s) submitted did not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG–4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

(d) *Payment for intervals and temporary school closings.* In administering 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4138(f) when determining whether an individual is entitled to payment for an interval or temporary school closing.

(Authority: 38 U.S.C. 3034, 3680)

(e) *Payee.* (1) VA will make payment to the veteran or servicemember or to a duly appointed fiduciary. The VA will make direct payment to the veteran or servicemember even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034, 3680)

(f) *Limitations on payments.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034, 3680)

(g) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the servicemember's or veteran's death is

payable under the provisions of §3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0695 and 2900–0698)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136, May 2, 1991; 56 FR 31332, July 10, 1991; 57 FR 15025, Apr. 24, 1992; 61 FR 26117, May 24, 1996; 62 FR 55761, Oct. 28, 1997; 64 FR 52652, Sept. 30, 1999; 68 FR 35180, June 12, 2003; 72 FR 16982, Apr. 5, 2007; 73 FR 65269, Nov. 3, 2008]

### §21.7141 Tutorial assistance.

An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill - Active Duty may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of §21.4236.

(Authority: 38 U.S.C. 3019, 3492)

[61 FR 26117, May 24, 1996]

### §21.7142 Accelerated payments, payment of tuition assistance top-up, and licensing or certification test reimbursement.

(a) *Amount of accelerated payment.* An accelerated payment will be the lesser of—

(1) The amount equal to 60 percent of the charged tuition and fees for the term, quarter, or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(2) The aggregate amount of basic educational assistance to which the individual remains entitled under 38 U.S.C. chapter 30 at the time of the payment.

(Authority: 38 U.S.C. 3014A)

(b) *Amount of tuition assistance top-up.* The amount of tuition assistance top-up VA will pay to an individual for a course is the lowest of the following:

(1) All of the charges of the educational institution for the individual's education or training that the Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c);

(2) That portion of the charges of the educational institution for the individual's education that the Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c) and for which the individual has stated to VA that he or she wishes to receive payment;

(3) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to educational assistance as provided under §21.7072 or §21.7073 by the individual's monthly rate of basic educational assistance as provided under §21.7136 or §21.7137, as appropriate;

(4) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to tuition assistance top-up as provided under §21.7075 by the individual's monthly rate of basic educational assistance as provided under §21.7136 or §21.7137, as appropriate; or

(5) An amount VA will determine by—

(i) Dividing the total number of days from the date on which the individual became eligible for educational assistance under the Montgomery GI Bill—Active Duty by the number of days in the term during which the individual took the course or course for which he or she wants tuition assistance top-up; and

(ii) Multiplying the result by the amount stated in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 3014(b))

(c) *Amount of reimbursement for taking a licensing or certification test.* The amount of educational assistance VA will pay as reimbursement for taking an approved licensing or certification test is the lowest of the following:

(1) The fee that the licensing or certification organization offering the test charges for taking the test;

(2) $2,000; or

(3) An amount VA will determine by multiplying the veteran's or servicemember's remaining months and days of entitlement to educational assistance as provided under §21.7072 or §21.7073 by the veteran's or servicemember's monthly rate of basic educational assistance as provided

under § 21.7136 or § 21.7137, as appropriate.

(Authority: 38 U.S.C. 3032(f))

[72 FR 16982, Apr. 5, 2007, as amended at 72 FR 35662, June 29, 2007]

### § 21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* (1) Except for receipt of a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), a veteran is barred from concurrently receiving educational assistance under 38 U.S.C. chapter 30 and—

(i) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(ii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(b) If an individual is eligible for benefits under 38 U.S.C. chapter 30 and one or more of the programs listed in paragraphs (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b))

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible veteran or servicemember—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034, 3681)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28389, July 11, 1990; 57 FR 15025, Apr. 24, 1992; 58 FR 46867, Sept. 3, 1993; 61 FR 20729, May 8, 1996. Redesignated at 68 FR 35180, June 12, 2003, as amended at 74 FR 14670, Mar. 31, 2009]

### § 21.7144 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4008. See § 21.7133.

(Authority: 38 U.S.C. 3034, 3690(b))

(b) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.

(2) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of the educational institution if VA determines that the overpayment was made as the result of willful or negligent:

(i) False certification by the educational institution; or

(ii) Endorsement of a veteran's or servicemember's false certification of his or her actual attendance.

(Authority: 38 U.S.C. 3034, 3685)

(c) *Recovery of overpayments.* In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of § 21.4009 (except paragraph

(a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034, 3685)

CROSS REFERENCE: *Entitlement charges.* See §21.7076(c).

[62 FR 55761, Oct. 28, 1997. Redesignated at 68 FR 35180, June 12, 2003.]

PURSUIT OF COURSES

**§21.7150 Pursuit.**

Except for a veteran or servicemember seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, the veteran's or servicemember's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 3034(b))

[53 FR 1757, Jan. 22, 1988, as amended at 72 FR 16982, Apr. 5, 2007]

**§21.7151 Advance payment and accelerated payment certifications.**

All certifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.

(a) *Certification needed before an advance payment can be made.* In order for a veteran or service member to receive an advance payment of educational assistance, the application or other document must be signed by the veteran or the enrollment certification must be signed by an authorized official of the educational institution.

(Authority: 38 U.S.C. 3034, 3680(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.

(1) For each individual receiving an advance payment an educational institution must—

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the educational institution has initially verified the enrollment of the individual, the individual, not the educational institution, must make subsequent verifications in order to release further payment for that enrollment as provided in §21.7154(a) of this part.

(Authority: 38 U.S.C. 3034, 3680(d))

(c) *Accelerated payments.* (1) A veteran or servicemember is eligible for an accelerated payment only if—

(i) The veteran or servicemember submits a signed statement to the school or to VA that states ''I request accelerated payment'';

(ii) The veteran or servicemember is enrolled in a course or program of education or training beginning on or after October 1, 2002;

(iii) The veteran is enrolled in an approved program as defined in §21.4200 (aa);

(iv) The charged tuition and fees for the term, quarter, or semester (or entire program for those programs not offered on a term, quarter or semester basis) divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200 percent of the monthly rate of basic educational assistance allowance otherwise payable under §21.7136 or §21.7137, as applicable;

(v) The veteran or servicemember requesting the accelerated payment has not received an advance payment under §21.7140(a) for the same enrollment period; and

(vi) The veteran or servicemember has submitted all certifications required under §21.7154(d) for any previous accelerated payment he or she received.

(2) Except as provided in paragraph (c)(5) of this section, VA will make the accelerated payment directly to the educational institution, in the veteran's or servicemember's name, for delivery to the veteran or servicemember if:

(i) The educational institution submits the enrollment certification required under §21.7152 before the actual start of the term, quarter or semester (or the start of the program for a program not offered on a term, quarter or semester basis); and

(ii) The educational institution at which the veteran or servicemember is accepted or enrolled agrees to—

(A) Provide for the safekeeping of the accelerated payment check before delivery to the veteran or servicemember;

(B) Deliver the payment to the veteran or servicemember no earlier than the start of the term, quarter or semester (or the start of the program if the program is not offered on a term, quarter or semester basis);

(C) Certify the enrollment of the veteran or servicemember and the amount of tuition and fees therefor; and

(D) Certify the delivery of the accelerated payment to the veteran or servicemember.

(3) VA will make accelerated payments directly to the veteran or servicemember if the enrollment certification required under § 21.7152 is submitted on or after the first day of the enrollment period. VA will electronically deposit the accelerated payment in the veteran's or servicemember's bank account unless—

(i) The veteran or servicemember does not have a bank account; or

(ii) The veteran or servicemember objects to payment by electronic funds transfer.

(4) VA must make the accelerated payment no later than the last day of the month immediately following the month in which VA receives a certification from the educational institution regarding—

(i) The veteran's or servicemember's enrollment in the program of education; and

(ii) The amount of the charged tuition and fees for the term, quarter or semester (or for a program that is not offered on a term, quarter, or semester basis, the entire program).

(5) The Director of the VA field station of jurisdiction may direct that accelerated payments not be made in advance of the first day of the enrollment period in the case of veterans or servicemembers attending an educational institution that demonstrates its inability to discharge its responsibilities for accelerated payments. In such a case, the accelerated payment will be made directly to the veteran or servicemember as provided in paragraph (a)(3).

(Authority: 38 U.S.C. 3014A)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0636)

[55 FR 28390, July 11, 1990, as amended at 68 FR 35180, June 12, 2003]

### § 21.7152 Certification of enrollment.

Except as stated in § 21.7140, the educational institution must certify the veteran's or servicemember's enrollment before he or she may receive educational assistance.

(a) *Educational institutions must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require educational institutions to certify the enrollments of veterans or servicemembers who either are seeking tuition assistance top-up or, in the cases described in § 21.7151, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify the fact that the veteran or servicemember took the test. In all other cases the educational institution must certify the veteran's or servicemember's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as the Secretary may specify.

(Authority: 38 U.S.C. 3014(b), 3031, 3034, 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Educational institutions organized on a term, quarter or semester basis generally shall report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month or if the veteran elects not be paid for the intervals between terms. The educational institution

must submit a separate enrollment certification for each term, quarter or semester when the certification is for—

(i) A servicemember, or

(ii) A veteran who—

(A) Is training on a less than one-half time basis, or

(B) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony.

(2) Educational institutions organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any intervals designated in its approval data as breaks between school years.

(3) When a veteran enrolls in independent study leading to a standard college degree, the educational institution's certification will include—

(i) The enrollment date, and

(ii) The ending date for the period being certified. If the educational institution has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034, 3684; Pub. L. 98–525)

(Approved by the Office of Management and Budget under control number 2900–0073)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28390, July 11, 1990; 61 FR 6790, Feb. 22, 1996; 72 FR 16983, Apr. 5, 2007]

### §21.7153 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the educational institution he or she is attending.

(Authority: 38 U.S.C. 3034, 3474; Pub. L. 98–525)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the individual will be no longer retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the educational institution's action is retaliatory.

(Authority: 38 U.S.C. 3034, 3474; Pub. L. 98–525)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the educational institution in which he or she is enrolled.

(Authority: 38 U.S.C. 3034, 3474)

(d) *Reentrance after discontinuance.* (1) An individual may be reentered following discontinuance because of unsatisfactory attendance, conduct or progress when either of the following sets of conditions exists:

(i) The individual resumes enrollment at the same educational institution in the same program of education and the educational institution has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that—

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program which the individual now proposes to pursue is suitable to his or her aptitudes, interests and abilities.

(2) Reentrance may be for the same program, for a revised program, or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034, 3474)

[53 FR 1757, Jan. 22, 1988, as amended at 57 FR 15025, Apr. 24, 1992]

**§ 21.7154 Pursuit and absences.**

Except as provided in this section, an individual must submit a verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* An individual does not have to submit a monthly verification as described in the introductory text of this section when the individual—

(1) Is enrolled in a correspondence course;

(2) Has received a lump-sum payment for the training completed during a month; or

(3) Has received an advance payment for the training completed during a month.

(Authority: 38 U.S.C. 3014A, 3034, 3684)

(4) Has received an accelerated payment for the enrollment period.

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all veterans and servicemembers will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The individual's unsatisfactory conduct, progress, or attendance;

(iii) The date of interruption or termination of training;

(iv) Changes in the number of credit hours or in the number of clock hours of attendance other than those described in § 21.7156(a);

(v) Nonpunitive grades; and

(vi) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must—

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the veteran or servicemember on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 38 U.S.C. 3034, 3684; Pub. L. 98–525, Pub. L. 99–576)

(c) *Additional requirements for apprenticeships and other on-job training programs.* (1) When a veteran is pursuing an apprenticeship or other on-job training he or she must certify training monthly by reporting the number of hours worked.

(2) The information provided by the veteran must be verified by the training establishment.

(Authority: 38 U.S.C. 3034, 3680(a))

(d) *Additional requirements for individuals receiving an accelerated payment.* (1) When an individual receives an accelerated payment as provided in § 21.7151(c) and (d), he or she must certify the following information within 60 days of the end of the term, quarter or semester (or entire program when the program is not offered on a term, quarter, or semester basis) for which the accelerated payment was made:

(i) The course or program was successfully completed, or if the course was not completed—

(A) The date the veteran or servicemember last attended; and

(B) An explanation why the course was not completed;

(ii) If the veteran or servicemember increased or decreased his or her training time—

(A) The date the veteran or servicemember increased or decreased training time; and

(B) The number of credit/clock hours pursued before and after each such change in training time; and

(iii) The accelerated payment was received and used.

(2) VA will establish an overpayment equal to the amount of the accelerated payment if the required certifications in paragraph (c)(1) of this section are not timely received.

(3) VA will determine the amount of the overpayment of benefits for courses not completed in the following manner—

(i) For a veteran or servicemember who does not complete the full course,

courses, or program for which the accelerated payment was made, and who does not substantiate mitigating circumstances for not completing, VA will establish an overpayment equal to the amount of the accelerated payment.

(ii) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, but who substantiates mitigating circumstances for not completing, VA will prorate the amount of the accelerated payment to which he or she is entitled based on the number of days from the beginning date of the enrollment period through the date of last attendance. VA will determine the prorated amount by dividing the accelerated payment amount by the number of days in the enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the date of last attendance. The result of this calculation will equal the amount the individual is due. The difference between the accelerated payment and the amount the individual is due will be established as an overpayment.

(Authority: 38 U.S.C. 3014A(g))

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0465 and 2900–0636)

[55 FR 28390, July 11, 1990, as amended at 57 FR 15026, Apr. 24, 1992; 57 FR 24368, June 9, 1992; 61 FR 26117, May 24, 1996; 63 FR 14038, Mar. 24, 1998; 68 FR 35180, June 12, 2003]

### §21.7156 Other required reports.

(a) *Reports from veterans and servicemembers.* (1) A veteran or servicemember enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A veteran or servicemember not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 38 U.S.C. 3680(g))

(b) *Interruptions, terminations, or changes in hours of credit or attendance.* (1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a veteran or servicemember:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a veteran's or servicemember's hours of credit or attendance when:

(i) The veteran or servicemember is enrolled full time in a program of education for a standard term, quarter, or semester before the change;

(ii) The veteran or servicemember continues to be enrolled full time after the change; and

(iii) The tuition and fees charged to the servicemember have not been adjusted as a result of the change.

(Authority: 38 U.S.C. 3034, 3684)

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

(4) If the educational institution has certified the veteran's or servicemember's enrollment for more than one term, quarter or semester and the veteran or servicemember interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to VA in time for VA to receive the report within 30 days of

the last officially scheduled registration date for the next term, quarter or semester.

(Authority: 38 U.S.C. 3034, 3680(a), 3684)

(5) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to VA in time for VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 38 U.S.C. 3034, 3684)

(c) *Nonpunitive grades.* (1) An educational institution may assign a nonpunitive grade for a course or subject in which the veteran or servicemember is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in a form prescribed by the Secretary in time for VA to receive it before the earlier of the following dates is reached:

(i) Thirty days from the date on which the educational institution assigns the grade, or

(ii) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(2) If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution may use the monthly certification of attendance to report nonpunitive grades provided VA will receive the report within the time period stated in paragraph (c)(1) of this section.

(Authority: 38 U.S.C. 3034, 3684)

(d) *Attendance records.* Nothing in this section or in any section in 38 CFR part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Authority: 38 U.S.C. 3034, 3685)

(The information collection requirements in paragraphs (a) and (b) of this section have been approved by the Office of Management and Budget under control numbers 2900–0465 and 2900–0156, respectively)

[55 FR 28391, July 11, 1990, as amended at 57 FR 15026, Apr. 24, 1992; 63 FR 14038, Mar. 24, 1998]

### § 21.7158 False, late, or missing reports.

(a) *Veteran.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 of this part to a veteran or servicemember or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 38 U.S.C. chapter 30 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 34 or 36.

(Authority: 38 U.S.C. 3034, 3680, 3690, 6103; Pub. L. 98–525)

(b) *Educational institution or training establishment.* (1) VA may hold an educational institution or training establishment liable for overpayments which result from the educational institution's or training establishment's willful or negligent failure to report excessive absences from a course or discontinuance or interruption of a course by a veteran or servicemember or from willful or negligent false certification by the educational institution or training establishment. See § 21.7144(b).

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses

for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034, 3690)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28391, July 11, 1990; 61 FR 26117, May 24, 1996; 63 FR 35837, July 1, 1998]

### § 21.7159 Reporting fee.

In determining the amount of the reporting fee payable to educational institutions or joint apprenticeship training committees acting as training establishments for furnishing required reports, VA will apply the provisions of § 21.4206 of this part in the same manner as they are in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 38 U.S.C. 3034, 3684; Pub. L. 98–525, Pub. L. 99–576)

[55 FR 28391, July 11, 1990]

COURSE ASSESSMENT

### § 21.7170 Course measurement.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the following sections:

(a) § 21.4270 (except paragraphs (a)(2) and (a)(3) and those portions of paragraph (c) and footnotes dealing with farm cooperative training)—Measurement of courses;

(b) § 21.4272—Collegiate course measurement;

(c) § 21.4273—Collegiate graduate;

(d) § 21.4274—Law courses; and

(e) § 21.4275—Practical training courses; measurement.

(Authority: 38 U.S.C. 3034, 3688)

[62 FR 55761, Oct. 28, 1997]

### § 21.7172 Measurement of concurrent enrollments.

(a) *Conversion of units of measurement required.* Where a veteran enrolls concurrently in courses offered by two schools and the standards for the measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the veteran is pursuing at the primary institution. This conversion will be accomplished as follows:

(1) If VA measures the courses at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the veteran's training time.

(Authority: 38 U.S.C. 3034, 3688)

(3) If VA measures the courses pursued at the primary institution on a clock-hour basis, and

(i) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which VA can measure on credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's training time; or

(ii) VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the veteran's training time.

(Authority: 38 U.S.C. 3034, 3688)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require VA to convert clock hours to credit hours, it will do so by—

(1) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in

paragraph (b)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034, 3688)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require VA to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (c)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034, 3688)

(d) *Both courses measured on a credit hour basis or both courses measured on a clock hour basis.* If VA measures the courses pursued at both institutions on a credit hour basis or on a clock hour basis, VA will measure the veteran's enrollment by adding together the units of measurement for the courses at the second school and the units of measurement for the courses at the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution.

(Authority: 38 U.S.C. 3034, 3688)

[55 FR 28392, July 11, 1990, as amended at 57 FR 15026, Apr. 24, 1992; 61 FR 6790, Feb. 22, 1996; 62 FR 55761, Oct. 28, 1997]

STATE APPROVING AGENCIES

**§ 21.7200 State approving agencies.**

State approving agencies have the same general responsibilities for approving courses for training under 38 U.S.C. chapter 30 as they do for approving courses for training under 38 U.S.C. chapter 34. Accordingly, in administering 38 U.S.C. chapter 30, VA will apply the provisions of the following sections in the same manner, as they are applied for the administration of 38 U.S.C. chapters 34 and 36.

(a) Section 21.4150 (except paragraph (e))—Designation,

(b) Section 21.4151—Cooperation,

(c) Section 21.4152—Control by agencies of the United States,

(d) Section 21.4153—Reimbursement of expenses;

(e) Section 21.4154—Report of activities; and

(f) Section 21.4155—Evaluation of State approving agency performance.

(Authority: 38 U.S.C. 3034, 3670, 3671, 3672, 3673, 3674, 3674A; Pub. L. 98–525, Pub. L. 100–323)

[53 FR 1757, Jan. 22, 1988, as amended at 54 FR 49760, Dec. 1, 1989]

APPROVAL OF COURSES

**§ 21.7220 Course approval.**

(a) *Courses must be approved.* (1) A course of education, including the class schedules of a resident course not leading to a standard college degree, offered by an educational institution must be approved by—

(i) The State approving agency for the State in which the educational institution is located, or

(ii) The State approving agency which has appropriate approval authority, or

(iii) VA, where appropriate. In determining when it is appropriate for VA to approve a course, VA will apply the provisions of § 21.4250(b)(3) and (c) of this part.

(2) A course approved under 38 U.S.C. chapter 36 is approved for the purposes of 38 U.S.C. chapter 30 unless it is one of the types of courses listed in § 21.7222 of this part.

(Authority: 38 U.S.C. 3034, 3672; Pub. L. 98–525)

(b) *Course approval criteria.* In administering benefits payable under 38 U.S.C. chapter 30, VA and, where appropriate, the State approving agencies, shall apply the following sections.

(1) Section 21.4250 (except paragraph (c)(1))—Jurisdiction for course and licensing and certification test approval and approval notices;

(2) Section 21.4251—Minimum period of operation requirement for educational institutions;

(3) Section 21.4253 (except that portion of paragraph (f)(3) which permits approval of a course leading to a high school diploma)—Accredited courses;

(4) Section 21.4254—Nonaccredited courses;

(5) Section 21.4255—Refund policy—nonaccredited courses;

(6) Section 21.4258—Notice of approval;

(7) Section 21.4259—Suspension or disapproval;

(8) Section 21.4260—Courses in foreign countries;

(9) Section 21.4265—Practical training approved as institutional training or on-job training;

(10) Section 21.4266—Courses offered at subsidiary branches or extensions;

(11) Section 21.4267—Approval of independent study; and

(12) Section 21.4268—Approval of licensing and certification tests.

(Authority: 38 U.S.C. 3034, 3476, 3672, 3675, 3676, 3678, 3679, 3680A, 3689)

(c) *Flight training*. VA and the State approving agencies shall apply the provisions of § 21.4263 when approving flight training under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3034)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28392, July 11, 1990; 56 FR 20136, May 2, 1991; 57 FR 15026, Apr. 24, 1992; 61 FR 6790, Feb. 22, 1996; 63 FR 34131, June 23, 1998; 72 FR 16983, Apr. 5, 2007]

### § 21.7222 Courses and enrollments which may not be approved.

The Secretary may not approve an enrollment by a veteran or servicemember in, and a State approving agency may not approve for training under 38 U.S.C. chapter 30—

(a) A bartending or personality development course;

(b) A flight training course unless the course meets the requirements of § 21.4263.

(Authority: 38 U.S.C. 3034(d))

(c) A course offered by radio;

(d) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment commonly called a farm cooperative course; or

(e) Any independent study program except—

(1) An accredited independent study program (including open circuit television) leading to a standard college degree;

(2) Enrollments in an independent study course after December 26, 2001, in a program leading to a certificate that reflects educational attainment offered by an institution of higher learning; or

(3) As provided for in § 21.7120(d).

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

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28392, July 11, 1990; 56 FR 20136, May 2, 1991; 56 FR 26035, June 6, 1991; 57 FR 15026, Apr. 24, 1992; 61 FR 6791, Feb. 22, 1996; 73 FR 2427, Jan. 15, 2008]

### § 21.7280 Death benefit.

(a) *Overview*. VA will pay a death benefit under 38 U.S.C. ch. 30 when an individual's death meets the criteria of this section; the individual is survived by someone described in this section; and the amount of educational assistance paid or payable to the individual is less than the amount reduced from the individual's basic pay.

(Authority: 38 U.S.C. 3017; Pub. L. 100–689) (July 1, 1985)

(b) *Necessary criteria for death benefit*. VA may pay a death benefit under 38 U.S.C. ch. 30 only if—

(1) The individual either—

(i) Dies while on active duty, or

(ii) Dies after October 28, 1992, and his or her date of death is within one year after the date of his or her last discharge or release from active duty; and

(2) The death of the individual is service connected. In determining if the death is service connected, VA will apply the provisions of § 3.312 of this chapter; and

(3) Either—

(i) At the time of the individual's death he or she is entitled to basic educational assistance through having met the eligibility requirements of § 21.7042, or

(ii) At the time of the individual's death he or she is on active duty with the Armed Forces and but for the minimum service requirements of § 21.7042(a)(2) or § 21.7042(b)(3) or (4) or the educational requirements of § 21.7042(a)(3) or § 21.7042(b)(2) or both would be entitled to basic educational

assistance through having met the eligibility requirements of § 21.7042.

(Authority: 38 U.S.C. 3017(a))

(c) *Payee.* (1) VA shall pay a death benefit to the living person or persons in the order listed in this paragraph.

(i) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance Policy,

(ii) The surviving spouse of the individual,

(iii) The surviving child or children of the individual, in equal shares,

(iv) The surviving parent or parents of the individual in equal shares.

(2) If none of the persons listed in this paragraph is living, VA shall not pay a death benefit under this section.

(Authority: 38 U.S.C. 3017(a)(2); Pub. L. 100–689) (July 1, 1985)

(d) *Amount of death benefit.* (1) The amount of any payment made under this section shall be equal to—

(i) The amount reduced from the individual's basic pay as provided in § 21.7042(f) less—

(ii) The total of—

(A) The amount of educational assistance that has been paid to the individual under 38 U.S.C. ch. 30, and

(B) The amount of accrued benefits paid or payable with respect to the individual.

(2) VA shall pay no death benefit when the amount determined by subparagraph (1) of this paragraph is zero or less than zero.

(Authority: 38 U.S.C. 3017 (b) and (c); Pub. L. 100–689) (July 1, 1985)

[56 FR 20136, May 2, 1991, as amended at 57 FR 15026, Apr. 24, 1992; 61 FR 6791, Feb. 22, 1996]

ADMINISTRATIVE

### § 21.7301 Delegations of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Under Secretary for Benefits of VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA designated by him or her, to make findings and decisions under 38 U.S.C. chapter 30 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter.

(Authority: 38 U.S.C. 512(a))

(b) *Other delegations of authority.* In administering benefits payable under 38 U.S.C. chapter 30, VA shall apply § 21.4001(b), (c)(1) and (2) and (f) of this part in the same manner as those paragraphs are applied in the administration of 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 512(a), 3034, 3696; Pub. L. 98–525)

### § 21.7302 Finality of decisions.

(a) *Agency decisions generally are binding.* The decision of a VA facility of original jurisdiction on which an action is based—

(1) Will be final,

(2) Will be binding upon all field offices of the VA as to conclusions based on evidence on file at that time, and

(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7303 of this part. (See §§ 19.192 and 19.193 of this chapter).

(Authority: 38 U.S.C. 511)

(b) *Decisions of an activity within VA.* Current determinations of line of duty and other pertinent elements of eligibility for a program of education made by either an Adjudicative activity or an Insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 511)

(c) *Character of discharge determinations.* (1) A determination of the character of a veteran's discharge made by a competent military or naval authority or by the Coast Guard is binding upon VA.

(2) Any determination of the character of a veteran's discharge made by VA in connection with the veteran's eligibility for a benefit other than educational assistance under 38 U.S.C.

chapter 30, shall not affect his or her eligibility for educational assistance.

(Authority: 38 U.S.C. 3011(a), 3012(a); Pub. L. 98–525)

### § 21.7303 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 511; Pub. L. 98–525)

### § 21.7305 Conflicting interests.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4005.

(Authority: 38 U.S.C. 3034, 3036)

[62 FR 55761, Oct. 28, 1997]

### § 21.7307 Examination of records.

In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4209.

(Authority: 38 U.S.C. 3034, 3690)

[62 FR 55761, Oct. 28, 1997]

### § 21.7310 Civil rights.

(a) *Delegation of authority concerning Federal equal opportunity laws.* The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this chapter. These equal opportunity laws are:

(1) Title VI, Civil Rights Act of 1964;

(2) Title IX, Education Amendments of 1972, as amended;

(3) Section 504, Rehabilitation Act of 1973; and

(4) The Age Discrimination Act of 1975.

(b) *Role of State approving agencies.* In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Under Secretary for Benefits may use the State approving agencies as provided in § 21.4258(d).

(Authority: 42 U.S.C. 2000)

[62 FR 55761, Oct. 28, 1997]

### § 21.7320 Procedural protection; reduction following loss of dependent.

(a) *Notice of reduction required when a veteran loses entitlement to additional educational assistance for a dependent.* Except as provided in paragraph (b) of this section, VA will not reduce an award of educational assistance following the veteran's loss of a dependent unless:

(1) VA has notified the veteran of the adverse action; and

(2) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance should not be reduced.

(b) *No advance notice required in certain situations.* When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(1) VA will not send either an advance or a prereduction notice as stated in paragraph (a) of this section; but

(2) VA will send notice of the adverse action contemporaneous with the reduction in educational assistance.

(Authority: 38 U.S.C. 5112, 5113)

[58 FR 63530, Dec. 2, 1993]

## Subpart L—Educational Assistance for Members of the Selected Reserve

AUTHORITY: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

SOURCE: 53 FR 34740, Sept. 8, 1988, unless otherwise noted.

### § 21.7500 Establishment and purpose of educational assistance program.

An educational assistance program for certain members of the Selected Reserve is established to encourage

membership in the Selected Reserve of the Ready Reserve.

(Authority: 10 U.S.C. 16131(a); Pub. L. 98–525)

DEFINITIONS

**§ 21.7520 Definitions.**

For the purposes of regulations from § 21.7500 through § 21.7999, governing the administration and payment of educational assistance under 10 U.S.C. chapter 1606, the Selected Reserve Educational Assistance Program, the following definitions apply. (See also additional definitions in § 21.1029).

(a) *Definitions of participants*—(1) *Reservist*. The term *reservist* means a member of the Selected Reserve who is eligible for educational assistance under 10 U.S.C. chapter 1606.

(2) *Selected Reserve*. The term *Selected Reserve* means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces of the United States, as required to be maintained under section 268(b), 10 U.S.C.

(Authority: 10 U.S.C. 16131; Pub. L. 98–525)

(b) *Other definitions*—(1) *Attendance*. The term *attendance* means the presence of a reservist—

(i) In the class where the approved course in which he or she is enrolled is taught;

(ii) At a training establishment; or

(iii) In any other place of instruction, training, or study designated by the educational institution or training establishment where the reservist is enrolled and is pursuing a program of education.

(Authority: 10 U.S.C. 2131(c)(1), 2136(b); 38 U.S.C. 3474; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101–189, 103 Stat. 1456–1458)

(2) *Audited course*. The term *audited course* has the same meaning as provided in § 1.4200(i) of this part.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3680(a); Pub. L. 98–525)

(3) *Deficiency course*. The term *deficiency course* means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 10 U.S.C. 16136(b); Pub. L. 98–525)

(4) *Divisions of the school year*. The term *divisions of the school year* has the same meaning as provided in § 21.4200(b) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–55)

(5) *Drop-add period*. The term *drop-add period* has the same meaning as provided in § 21.4200(l) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(6) *Educational assistance*. The term *educational assistance* means the monthly payment made to members of the Selected Reserve for pursuit of a program of education.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

(7) *Educational objective*. An approvable educational objective is one that leads to the awarding of an associated degree, a bachelor's degree or the equivalent.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(8) *Enrollment*. The term *enrollment* means the state of being on that roll or file of an educational institution which contains the names of active students.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98–525)

(9) *Enrollment period*. The term *enrollment period* has the same meaning as provided in § 21.4200(p) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98–525)

(10) *In residence on a standard quarter- or semester-hour basis*. The term *in residence on a standard quarter- or semester-hour basis* has the same meaning as provided in § 21.4200(r) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(11) *Independent study*. The term *independent study* has the same meaning as provided in §21.4267(b) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(12) *Independent study-resident training*. The term *independent study-resident training* means:

(i) The state of being enrolled concurrently in one or more undergraduate courses or subjects offered by independent study as defined in paragraph (b)(11) of this section and one or more courses or subjects offered by resident training as defined by paragraph (b)(22) of this section, or

(ii) The state of being enrolled in one or more undergraduate level subjects which

(A) Do not meet the requirements of either paragraphs (b)(22)(i), (b)(22)(ii) or (b)(22)(iii) of this section,

(B) Have some weeks when standard class sessions are scheduled, and

(C) Consist of independent study as defined in paragraph (b)(11) of this section during those weeks when there are no regularly scheduled standard class sessions.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(13) *Institution of higher learning*. The term *institution of higher learning* means

(i) A college, university or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree, if the educational institution is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(ii) When there is no state law to authorize the granting of a degree, an educational institution which

(A) Is accredited for degree programs by a recognized accrediting agency, or

(B) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(iii) A hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree.

(iv) An educational institution which

(A) Is not located in a State,

(B) Offers a course leading to a standard college degree or the equivalent, and

(C) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located.

(Authority: 10 U.S.C. 16131; Pub. L. 98–525)

(14) *Mitigating circumstances*. (i) Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the reservist;

(B) An illness or death in the reservist's family;

(C) An unavoidable change in the reservist's conditions of employment;

(D) An unavoidable geographical transfer resulting from the reservist's employment;

(E) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment;

(F) Discontinuance of the course by the educational institution;

(G) Unanticipated active duty for training; and

(H) Unanticipated difficulties in providing for child care for the reservist's child or children.

(ii) If a reservist withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating.

(iii) In the first instance of a withdrawal after May 31, 1989, from a course or course for which the reservist received educational assistance under chapter 1606, title 10, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will

not consider courses dropped during an educational institution's drop-add period as provided in paragraph (b)(14)(ii) of this section.

(Authority: 38 U.S.C. 3034, 3680(a)(1); Pub. L. 100–689)(June 1, 1989)

(15) *Nonpunitive grade*. The term *nonpunitive grade* has the same meaning as provided in § 21.4200(j) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(16) *Normal commuting distance*. The term *normal commuting distance* has the same meaning as provided in § 21.4200(m) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98–525)

(17) *Program of education*. A program of education—

(i) Is any unit course or subject or combination of unit courses or subjects pursued by a reservist at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution, which combination is generally accepted as necessary to meet requirements for a predetermined educational, professional, or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; and

(iii) Includes an approved full-time program of apprenticeship or of other on-job training.

(Authority: 10 U.S.C. 2131; 38 U.S.C. 3452(b); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; secs. 642(a), (b), (d), 645, Pub. L. 101–189, 103 Stat. 1456–1458)

(18) *Punitive grade*. The term *punitive grade* has the same meaning provided in § 21.4200(k) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(19) *Pursuit*. (i) The term *pursuit* means work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and with applicable criteria of 10 U.S.C. and 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses;

(B) Independent study;

(C) Correspondence courses;

(D) An apprenticeship or other on-job training program; or

(E) Flight courses.

(Authority: 10 U.S.C 2131, 2136; 38 U.S.C. 3680(g); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; secs. 642, 645, Pub. L. 101–189, 103 Stat. 1456–1458)

(ii) VA will consider a reservist who qualifies for payment during an interval, school closing, or holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(g); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642(c), (d), Pub. L. 101–189, 103 Stat. 1457–1458)

(20) *Refresher course*. The term *refresher course* means either:

(i) A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed; or

(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the reservist's field of employment since his or her entry on active duty and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 10 U.S.C. 2131(b), (c); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565; secs. 642(a), (b), (d), 645(a), (b), Pub. L. 101–189, 103 Stat. 1456–1458))

(21) *Remedial course*. The term *remedial course* means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3491(a)(2); Pub. L. 98–525)

(22) *Resident training.* The term *resident training* means—

(i) A course or subject, leading to a standard college degree, offered in residence on a standard quarter- or semester-hour basis;

(ii) A course of subject leading to a standard college degree at the undergraduate level which requires regularly scheduled, weekly classroom or laboratory sessions but does not require them in sufficient number to meet the provision of paragraph (23)(i) of this section,

(iii) A course or subject leading to standard college degree at the undergraduate level which

(A) Would qualify as a course under paragraph (b)(22)(i) of this section except that it does not have weekly class instruction,

(B) Requires pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks,

(C) Requires monthly pursuit of a total number of standard class sessions which, during the month, is required by a course meeting the provisions of paragraph (b)(22)(i) of this section,

(D) Is considered by the institution offering it as fully equivalent to a course described in paragraph (b)(22)(i) of this section including payment of tuition and fees; the awarding of academic credit for the purpose of meeting graduation requirements; and the transfer of credits to a course meeting the provision of paragraph (b)(22)(i) of this section, and

(E) Together with all other similar courses offered by the institution of higher learning, has an enrollment representing less than 50 percent of persons at that institution receiving educational assistance under either chapter 31, 32, 34, 35 or 36 of title 38 U.S.C.,

(iv) The hospital or fieldwork phase of a course with the objective of registered professional nurse or registered nurses, including a course leading to a degree in nursing when—

(A) The hospital or fieldwork phase of the course is an integral part of the course,

(B) The completion of the hospital or fieldwork course is a prerequisite to the successful completion of the course,

(C) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase, and

(D) The training is under the direct supervision of the institution of higher learning.

(v) The clinical training portion of a course leading to the objective of practical nurse, practical trained nurse, or licensed practical nurse when—

(A) The clinical training is offered by an affiliated or cooperating hospital,

(B) The student is enrolled in and supervised by the institution of higher learning during the clinical training, and

(C) The course is accredited by a nationally recognized accrediting agency or meets the requirements of the licensing body of the State in which the institution of higher learning is located.

(vi) An off-campus job experience included in a course offered by an institution of higher learning is resident training only if the course is—

(A) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting agencies;

(B) A part of the approved curriculum of the institution of higher learning;

(C) Directly supervised by the institution of higher learning;

(D) Measured in the same unit as other courses;

(E) Required for graduation; and

(F) Has a planned program of activities described in the institution of higher learning's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least a unit subject description; a provision for an assigned instructor; a statement that the planned program of activities is controlled by the institution of higher learning, not by the officials of the job establishment; a requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student; a statement that appropriate assignments are required for completion of the course; a grading system similar to

the system used for other resident subjects offered by the institution of higher learning; and a schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the institution of higher learning for its other resident courses.

(vii) A course including student teaching, or

(viii) A flight training course when included as a creditable part of an undergraduate course leading to a standard college degree.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

(23) *School, educational institution, institution.* The terms *school, educational institution,* and *institution* mean:

(i) A vocational school or business school;

(ii) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(iii) A public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma, or their equivalents; or

(iv) Any entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

(24) *School year.* The term *school year* means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 10 U.S.C. 16136(b); Pub. L. 98–525)

(25) *Standard class session.* The term *standard class session* has the same meaning as provided in § 21.4200(g) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98–525)

(26) *Standard college degree.* The term *standard college degree* has the same meaning as provided in § 21.4200(e) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688; Pub. L. 98–525)

(27) *State.* The term *State* has the same meaning as provided in § 21.1021(c) of this part.

(Authority: 38 U.S.C. 101(20); Pub. L. 98–525)

(28) *Vocational or professional objective.* A vocational or professional objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation, but not include any educational objectives beyond the bachelor's degree. When a program of education consists of series of courses not leading to an educational objective, these courses must be pursued at an institution of higher learning and must be required for attainment of a designated vocational or professional objective.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

(29) *Disabling effects of chronic alcoholism.* (i) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a reservist as a proximate and immediate result of activity undertaken by the reservist while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 100–689)(Nov. 18, 1988)

(30) *Cooperative course*. The term *cooperative course* means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion.

(Authority: 10 U.S.C. 2131(e); 38 U.S.C. 3686; sec. 642(b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(31) *Established charge*. The term *established charge* means the lesser of—

(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency; or

(ii) The actual charge to the reservist.

(Authority: 10 U.S.C. 2131(f); sec. 642(b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(32) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other on-job training, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 10 U.S.C. 2131(d), 16136(b); 38 U.S.C. 3452(e); sec. 642(b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(33) *Continuously enrolled*. The term *continuously enrolled* means being in an enrolled status at an educational institution for each day during the ordinary school year, and for consecutive school years. Consequently, continuity of enrollment is not broken by holiday vacations, vacation periods, periods during the school year between terms, quarters, or semesters, or by nonenrollment during periods of enrollment outside the ordinary school year (e.g., summer sessions).

(Authority: 10 U.S.C. 16136(b))

(34) *Persian Gulf War*. The term ''Persian Gulf War'' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33))

(35) *Alternative teacher certification program*. The term *alternative teacher certification program*, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (b)(23)(iv) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3452(c))

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57105, Dec. 3, 1992; 58 FR 51782, Oct. 5, 1993; 61 FR 20729, May 8, 1996; 61 FR 29300, June 10, 1996; 64 FR 23773, May 4, 1999; 65 FR 5788, Feb. 7, 2000]

CLAIMS AND APPLICATIONS

### § 21.7530 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 10 U.S.C. chapter 1606, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3472)

[64 FR 23773, May 4, 1999]

ELIGIBILITY

### § 21.7540 Eligibility for educational assistance.

(a) *Basic eligibility requirements*. A reservist must meet the requirements for a secondary school diploma (or an equivalency certificate) before applying for educational assistance. VA will decide whether a reservist met those requirements before applying for educational assistance. If the reservist applies before completing the requirements, VA will disallow the application. A reservist's premature application will not prevent the reservist from establishing eligibility at a later time by applying for educational assistance

again after having completed the academic requirements. The Armed Forces will decide whether a reservist has met all the other eligibility criteria needed in order to receive educational assistance pursuant to 10 U.S.C. chapter 1606. To be eligible a reservist:

(1) Shall:

(i) Enlist, reenlist, or extend an enlistment as a Reserve for service in the Selected Reserve so that the total period of obligated service is at least six years from the date of such enlistment, reenlistment, or extension; or

(ii) Be appointed as, or be serving as, a reserve officer and agree to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject;

(2) Must complete his or her initial period of active duty for training;

(3) Must be participating satisfactorily in the Selected Reserve;

(4) Must not have elected to have his or her service in the Selected Reserve credited toward establishing eligibility to benefits provided under 38 U.S.C. chapter 30; and

(5) Must have met the requirements for a secondary school diploma (or an equivalency certificate) before applying for educational assistance.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c))

(b) *Eligibility requirements for expanded benefits.* (1) A reservist shall be eligible to pursue all types of training described in subpart L of this part regardless of whether he or she has received a baccalaureate degree or equivalent evidence of completion of study if—

(i) After September 30, 1990, he or she takes one of the actions described in paragraph (a)(1)(i) or (a)(1)(ii) of this section;

(ii) The reservist meets the criteria of paragraphs (a)(2) through (a)(4) of this section; and

(iii) The reservist does not have his or her eligibility limited as described in paragraph (c) of this section.

(2) A reservist shall be eligible to pursue all types of training described in subpart L of this part except the training described in paragraph (b)(3) of this section if—

(i) After June 30, 1985, but not after September 30, 1990, he or she takes one of the actions described in paragraph (a)(1) or (a)(2) of this section;

(ii) The reservist has not received a baccalaureate degree or the equivalent evidence of completion of study;

(iii) The reservist meets all the other eligibility criteria of paragraph (a) of this section; and

(iv) The reservist does not have his or her eligibility limited by paragraph (c) of this section.

(3) The types of training which a reservist described in paragraph (b)(1) of this section may pursue, but which may not be pursued by a reservist described in paragraph (b)(2), are:

(i) A course which is offered by an educational institution which is not an institution of higher learning (to determine if a nursing course is offered by an institution of higher learning, see § 21.7622(f));

(ii) A correspondence course;

(iii) An accredited independent study course leading to a standard college degree. (See § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);

(iv) An accredited independent study course leading to a certificate that reflects educational attainment from an institution of higher learning. This provision applies to enrollment in an independent study course that begins on or after December 27, 2001. (See § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);

(v) A refresher, remedial or deficiency course;

(vi) A cooperative course;

(vii) An apprenticeship or other on-job training; and

(viii) A flight course.

(Authority: 10 U.S.C. 16131, 16132, 16136; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; 38 U.S.C. 3680A)

(c) *Limitations on establishing eligibility.* (1) An individual must elect in writing whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 3012, and has established eligibility to that assistance partially through service in the Selected Reserve; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 3012 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505 followed by service in the Selected Reserve.

(2) An election under this paragraph (c) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the reservist either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(3) If a reservist is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (c)(1) and (c)(2) of this section.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c))

(d) *Dual eligibility*. An individual who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 solely through service on active duty may establish eligibility for educational assistance under 10 U.S.C. chapter 1606 by meeting the requirements of paragraph (a) of this section.

(Authority: 10 U.S.C. 16132(d), 16134)

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0594)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 57 FR 57106, Dec. 3, 1992; 61 FR 20729, May 8, 1996; 61 FR 29301, June 10, 1996; 63 FR 45718, Aug. 27, 1998; 68 FR 59731, Oct. 17, 2003; 71 FR 1497, Jan. 10, 2006]

## § 21.7550 Ending dates of eligibility.

(a) *Time limit on eligibility*—(1) *Reservists who become eligible before October 1, 1992*. Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if the reservist becomes eligible for educational assistance before October 1, 1992, the period of eligibility expires effective the earlier of the following dates:

(i) The last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance; or

(ii) The date the reservist is separated from the Selected Reserve.

(2) *Reservists who become eligible after September 30, 1992*. Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if a reservist becomes eligible for educational assistance after September 30, 1992, the period of eligibility expires effective the earlier of the following dates:

(i) The last day of the 14-year period beginning on the date the reservist becomes eligible for educational assistance; or

(ii) The date the reservist is separated from the Selected Reserve.

(Authority: 10 U.S.C. 16133)

(b) *Extension due to active duty orders*. If the reservist serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S. Code, the period of this active duty plus four months shall not be considered in determining the time limit on eligibility found in paragraph (a) of this section.

(Authority: 10 U.S.C. 16133)

(c) *Completion of term of program*. (1) If a reservist is enrolled in an educational institution regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire during a quarter or semester, the period of eligibility shall be extended to the end of the quarter or semester.

(2) If a reservist is enrolled in an educational institution not regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire after a major portion of the course is completed, the period of eligibility shall be extended until the earlier of the following occurs:

(i) The end of the course, or

(ii) 12 weeks from the date on which the reservist's eligibility otherwise would have expired.

(Authority: 10 U.S.C. 16133(b)(1); Pub. L. 98–525)

(d) *Discharge for disability*. In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to education assistance, the reservist's period of eligibility expires effective the last day of the—

(1) 10-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or

(2) 14-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.

(Authority: 10 U.S.C. 16133)

(e) *Unit deactivated*. (1) Except as provided in paragraph (e)(3) or (e)(4) of this section, the period of eligibility of a reservist, eligible for educational assistance under this subpart, who ceases to become a member of the Selected Reserve during the period beginning October 1, 1991, and ending December 31, 2001, under either of the conditions described in paragraph (e)(2) of this section will expire on the date—

(i) 10 years after the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or

(ii) 14 years after the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.

(2) The conditions referred to in paragraph (e)(1) of this section for ceasing to be a member of the Selected Reserve are:

(i) The deactivation of the reservist's unit of assignment; and

(ii) The reservist's involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 10143(a).

(3) The provisions of paragraphs (e)(1) and (e)(2) of this section do not apply if the reservist ceases to be a member of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist ceases, under adverse conditions, to be a member of the Selected Reserve.

(4) A reservist's period of eligibility will expire if he or she is a member of a reserve component of the Armed Forces and (after having involuntarily ceased to be a member of the Selected Reserve) is involuntarily separated from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist is involuntarily separated under adverse conditions from the Armed Forces.

(Authority: 10 U.S.C. 16133)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992; 58 FR 51783, Oct. 5, 1993; 61 FR 29302, June 10, 1996; 68 FR 59731, Oct. 17, 2003; 71 FR 1498, Jan. 10, 2006; 71 FR 24582, Apr. 26, 2006]

### § 21.7551 Extended period of eligibility.

(a) *Period of eligibility may be extended*. VA shall grant an extension of a delimiting period determined by § 21.7550(a) of this part provided:

(1) The individual applies for an extension within the time period specified in § 21.1033(c) of subpart B.

(2) The individual was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period, because of a physical or mental disability, which is not the result of the reservist's own willful misconduct, and

which was incurred in or aggravated by service in the Selected Reserve. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7520(b)(29)). Evidence must establish that such a program of education was medically infeasible. VA will not grant a reservist an extension for a period of disability which was 30 days or less unless the evidence establishes that the reservist was prevented from enrolling or reenrolling in the chosen program, or was forced to discontinue attendance, because of the short disability.

(Authority: 10 U.S.C. 16133(b)(2), 38 U.S.C. 105, 3031(d); Pub. L. 98–525, Pub. L. 100–689)(Nov. 18, 1988)

(b) *Commencing date*. The reservist shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7550(a) of this part, and

(2) Must either be—

(i) On or before the 90th day following the date on which the reservist's application for an extension was approved by VA if the reservist is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(ii) On or before the first day of a term, quarter or semester within an ordinary school year following the 90th day after the reservist's application for an extension was approved in VA, if the reservist is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 10 U.S.C. 16133(b)(2), 38 U.S.C. 3031(d); Pub. L. 98–525)

(c) *Length of extended period of eligibility*. A reservist's extended period of eligibility shall be for the length of time that the reservist was prevented from initiating or completing his or her chosen program of education, except that it must end when the reservist is separated from the Selected Reserve. VA shall determine the length of time the reservist was prevented from initiating or completing his or her chosen program of education as follows:

(1) If the reservist is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the reservist's original eligibility period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the reservist's training became medically infeasible,

(ii) The last date of the reservist's delimiting date as determined by § 21.7550(a) of this part, or

(iii) The date the reservist resumed training.

(2) If the reservist is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the reservist's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the reservist's training became medically feasible, or

(ii) The reservist's delimiting date as determined by § 21.7550(a)(1) of this part.

(Authority: 10 U.S.C. 16133(b)(2), 38 U.S.C. 3031(d); Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992; 71 FR 1498, Jan. 10, 2006]

ENTITLEMENT

### § 21.7570 Entitlement.

Except as provided in § 21.7576(e) each reservist is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under this program, but is also subject to the provisions of § 21.4020 (a) and (b).

(Authority: 10 U.S.C. 16131(c); Pub. L. 98–525, Pub. L. 102–127) (Oct. 10, 1991)

[58 FR 51783, Oct. 5, 1993]

### § 21.7576 Entitlement charges.

(a) *Overview*. VA will make charges against entitlement as stated in this section. Charges are based upon the

principle that a reservist who trains full time for one day should be charged one day of entitlement, except for those pursuing:

(1) Flight training;

(2) Correspondence training;

(3) Cooperative training; or

(4) Apprenticeship or other on-job training.

(Authority: 10 U.S.C. 2131(c); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565; sec. 642(a), (b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(b) *Determining entitlement charge.* This paragraph states how VA will generally determine the charge against the entitlement of a reservist who is receiving educational assistance. However, when the circumstances described in paragraph (e) of this section apply to a reservist, VA will use that paragraph to determine an entitlement charge instead of this paragraph.

(1) Except for those pursuing flight training, correspondence training, cooperative training, apprenticeship or other on-job training, VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit for which the reservist is paid educational assistance) if the reservist is pursuing the program of education on a full-time basis; or

(ii) On the basis of a proportionate rate of elapsed time, if the reservist is pursuing the program of education on a three-quarter, one-half, or one-quarter-time basis.

(2) VA will compute elapsed time from the commencing date of the award of educational assistance to the date of discontinuance. If the reservist changes his or her training time after the commencing date of the award, VA will—

(i) Divide the enrollment period into separate periods of time during which the reservist's training time remains constant; and

(ii) Compute the elapsed time separately for each time period.

(3) For each month that a reservist is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against entitlement of—

(i) .75 of a month in the case of payments made during the first six months of the reservist's pursuit of the program of apprenticeship or other on-job training;

(ii) .55 of a month in the case of payments made during the second six months of the reservist's pursuit of the program of apprenticeship or other on-job training; and

(iii) .35 of a month in the case of payments made following the first twelve months of the reservist's pursuit of the program of apprenticeship or other on-job training.

(4) When a reservist is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge will be made in months and decimal fractions of a month, as determined by dividing the amount of the payment by an amount equal to the rate stated in § 21.7636(a)(1) as the rate otherwise applicable to the reservist for full-time training.

(5) When a reservist is pursuing a program of education partly in residence and partly by correspondence, VA will make a charge against entitlement—

(i) For the residence portion of the program as provided in paragraphs (b)(1) and (b)(2) of this section; and

(ii) For the correspondence portion of the program as provided in paragraph (b)(4) of this section.

(6) When a reservist is pursuing a program of education through cooperative training, VA will make a charge against entitlement of .8 of a month for each month in which the reservist is receiving payment at the rate for cooperative training. If the reservist is pursuing cooperative training for a portion of a month, VA will make a charge against entitlement on the basis of total elapsed time (.8 of a day for each day of pursuit).

(Authority: 10 U.S.C. 2131(c), (d); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565; sec. 642(b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(7) When a reservist is pursuing a program of education through flight training, VA will make a charge against entitlement at the rate of one month for each amount equal to the monthly rate stated in § 21.7636(a)(1) as

applicable for the month in which the training occurred.

(Authority: 10 U.S.C. 16136(c))

(c) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(i) of this section by the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 10 U.S.C. 16133(c); Pub. L. 98–525)

(d) *Interruption to conserve entitlement.* A reservist may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the reservist is enrolled for the entire term, quarter or semester. VA will make a charge for the entire period of certified enrollment, if the reservist is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;

(2) The reservist cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The reservist interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester; and

(4) The reservist requests interruption or cancellation for any break when an institution of higher learning was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. In such a case entitlement will be restored unless the reservist negotiated a check for educational assistance for the certified period and does not repay the amount received.

(Authority: 10 U.S.C. 16133(c); Pub. L. 98–525)

(e) *No entitlement charge for some reservists.* When the criteria described in this paragraph are met, there is an exception to the charges against entitlement described in paragraph (b) of this section.

(1) VA will make no charge against a reservist's entitlement when the reservist—

(i) While not serving on active duty, had to discontinue pursuit of a course

or courses as a result of being ordered to serve on active duty under sections 12301(a),(d),(g), 12302, or 12304 of title 10, U. S. Code; and

(ii) Failed to receive credit or lost training time toward completion of the reservist's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against a reservist's entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the reservist failed to receive credit or with respect to which the reservist lost training time.

(Authority: 10 U.S.C. 16131(c)(3))

[53 FR 34740, Sept. 8, 1988, as amended at 58 FR 51783, Oct. 5, 1993; 61 FR 29302, June 10, 1996; 68 FR 59731, Oct. 17, 2003]

COUNSELING

**§ 21.7600 Counseling.**

A reservist may receive counseling from VA before beginning training and during training.

(a) *Purpose*. The purpose of counseling is—

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an institution of higher learning appropriate for the educational or training objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the reservist that would be likely to provide the reservist with satisfactory employment opportunities in light of his or personal circumstances.

(Authority: 38 U.S.C. 16136(b), 3233; Pub. L. 98–525)

(b) *Required counseling*. (1) In any case in which the Department of Veterans Affairs has rated the reservist as being incompetent, the reservist must be counseled before selecting a program of education. The requirement that counseling be provided is met when—

(i) The reservist has had one or more personal interviews with the counselor;

(ii) The counselor and the reservist have jointly developed recommendations for selecting a program of education; and

(iii) The counselor has reviewed the recommendations with the reservist.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) The Department of Veterans Affairs will take no further action on a reservist's application for assistance under this chapter when he or she—

(i) Fails to report for counseling;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3967(a); Pub. L. 98–525, Pub. L. 99–576)

(c) *Availability of counseling*. Counseling is available for

(1) Identifying and removing reasons for academic difficulties which may result in interruption of discontinuance of training, or

(2) Considering changes in career plans and making sound decisions about the changes.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3967(a); Pub. L. 98–525)

(d) *Provision of counseling*. The Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the reservist. In addition, the Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the reservist's request for counseling, the reservist's initial application for benefits or any communication from the reservist or guardian indicating that the reservist wishes to change his or her program. The Department of Veterans Affairs shall take appropriate steps (including individual notification where feasible) to acquaint

reservists with the availability and advantages of counseling services.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3967(a); Pub. L. 98–525, Pub. L. 99–576)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991]

### § 21.7603 Travel expenses.

The Department of Veterans Affairs will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 10 U.S.C. chapter 1606 or for whom counseling is required under that chapter.

(Authority: 38 U.S.C. 111)

[56 FR 9628, Mar. 7, 1991, as amended at 61 FR 20729, May 8, 1996]

PROGRAMS OF EDUCATION

### § 21.7610 Selection of a program of education.

(a) *General requirement.* An individual must be pursuing an approved program of education in order to receive educational assistance.

(Authority: 10 U.S.C. 16131; Pub. L. 98–525)

(b) *Approval of a program of education.* VA will approve a program of education selected by a reservist for payment of educational assistance under 10 U.S.C. chapter 1606 if—

(1) The program accords with the definition of a program of education found in § 21.7520(b)(17) of this part,

(2) It has an educational, professional or vocational objective (as defined in § 21.7520(b)(7) and (28) of this part), and

(3) The courses and subjects in the program are approved for VA purposes as provided in § 21.7720 of this part.

(4) The reservist is not already qualified for the objective of the program.

(Authority: 10 U.S.C. 16136(b), 1671; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]

### § 21.7612 Programs of education combining two or more types of courses.

An approved program may consist of courses offered by two educational institutions concurrently, or courses offered through class attendance and by television concurrently. An educational institution may contract the actual training to another educational institution, provided the course is approved by the State approving agency having approval jurisdiction over the educational institution actually providing the training.

(a) *Concurrent enrollment.* When a reservist cannot schedule his or her complete program at one educational institution, VA may approve a program of concurrent enrollment. When requesting such a program, the reservist must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled within the period in which he or she plans to complete his or her program. A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540 (b)(2) and (b)(3), may pursue courses only at an institution of higher learning. If such a reservist cannot complete his or her program at one institution of higher learning, VA may approve a concurrent enrollment only if both the educational institutions the reservist enrolls in are institutions of higher learning.

(Authority: 10 U.S.C. 2131(c), 2136(b); 38 U.S.C. 3680(g); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101–189, 103 Stat. 1456–1458)

(b) *Television.* In determining whether a reservist may pursue all or part of a program of education by television, VA will apply the provisions of § 21.4233(c).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680A)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29303, June 10, 1996; 62 FR 40280, July 28, 1997]

### § 21.7614 Changes of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3691; Pub. L. 98–525, Pub. L. 101–366) (June 1, 1991)

[58 FR 50846, Sept. 29, 1993]

COURSES

**§ 21.7620 Courses included in programs of education.**

(a) *General.* Generally, VA will approve, and will authorize payment of educational assistance for the reservist's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7720 of this part, and which forms a part of a program of education as defined in § 21.7520(b)(17). Restrictions on this general rule are stated in the other paragraphs in this section and in § 21.7722(b) of this part, however.

(Authority: 10 U.S.C. 16131; Pub. L. 98–525)

(b) *Flight training.* (1) VA may pay educational assistance for an enrollment in a flight training course when—

(i) An institution of higher learning offers the course for credit toward the standard college degree the reservist is pursuing; or

(ii) When:

(A) The reservist is eligible to pursue flight training as provided in § 21.7540(b)(1) and (b)(3);

(B) The State approving agency has approved the course;

(C) A flight school is offering the course;

(D) The reservist's training meets the requirements of § 21.4263(b)(1);

(E) The reservist meets the requirements of § 21.4263(a); and

(F) The training for which payment is made occurs after September 29, 1990.

(2) VA will not pay educational assistance for an enrollment in a flight training course when the reservist is pursuing an ancillary flight objective.

(Authority: 10 U.S.C. 16131, 16136(c)(1); 38 U.S.C. 3034)

(c) *Independent study.* (1) VA will pay educational assistance to a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), for an enrollment in any course or unit subject offered by independent study only when the reservist is enrolled concurrently in one or more courses or unit subjects offered by resident training.

(2) Only a reservist who meets the requirements of § 21.7540(b)(1) may be paid educational assistance for an enrollment in an independent study course or unit subject without a simultaneous enrollment in a course or unit subject offered by resident training. The independent study course or unit subject must be accredited and lead to a standard college degree. Beginning with enrollments on or after December 27, 2001, a reservist may receive educational assistance for an independent study course that leads to a certificate. The certificate must reflect educational attainment and must be offered by an institution of higher learning.

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

(3) Except as provided in paragraph (c)(4) of this section and subject to the restrictions found in paragraph (c)(1) of this section, effective October 29, 1992, VA may pay educational assistance to a reservist who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the nonaccredited course or unit subject is required in order for the reservist to complete his or her program of education and the reservist:

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part; and

(B) Has remained continuously enrolled in the program of education of which the nonaccredited independent study course or unit subject forms a part from October 29, 1992, to the date the reservist enrolls in the nonaccredited independent study course or unit subject; or

(ii)(A) Was enrolled in and receiving educational assistance for the nonaccredited independent study course or unit subject on October 29, 1992; and

(B) Remains continuously enrolled in that course or unit subject.

(4) Whether or not the reservist is enrolled will be determined by the regularly prescribed standards and practices of the educational institution offering the course or unit subject.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680A(a)(4); sec. 313(b), Pub. L. 102–568, 106 Stat. 4332)

(d) *Graduate study*. VA will pay educational assistance for an enrollment in a course or subject leading to a graduate degree or certificate when the training occurs after November 29, 1993.

(Authority: 10 U.S.C. 16131(c))

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29303, June 10, 1996; 68 FR 59731, Oct. 17, 2003]

**§ 21.7622 Courses precluded.**

(a) *Unapproved courses*. VA will not pay educational assistance for an enrollment in any course which has not been approved by a State approving agency or by VA when that agency acts as a State approving agency. VA will not pay educational assistance for a new enrollment in a course when a State approving agency has suspended the approval of the course for new enrollments, nor for any period within any enrollment after the date that the State approving agency disapproves a course. See § 21.7720 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3672; Pub. L. 98–525)

(b) *Courses not part of a program of education*. VA will not pay educational assistance for an enrollment in any course which is not part of a program of education.

(Authority: 10 U.S.C. 16131; Pub. L. 98–525)

(c) *Erroneous, deceptive, misleading practices*. VA will not pay educational assistance for an enrollment in any courses offered at an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimation. VA will apply the provisions of § 21.4252(h) in making these decisions with regard to enrollments under 10 U.S.C. chapter 1606.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3696)

(d) *Avocational and recreational*. (1) VA will not pay educational assistance for an enrollment in any course—

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) VA presumes that the following courses are avocational or recreational in character unless the reservist justifies their pursuit to VA as provided in paragraph (3) of this section. The courses are:

(i) Any photography course or entertainment course; or

(ii) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective; or

(iii) Any other type of course which VA determines to be avocational or recreational.

(3) To overcome a presumption that a course is avocational or recreational in character, the reservist must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3473(d); Pub. L. 98–525)

(e) *Mitigating circumstances*. The reservist is not entitled to receive payment of educational assistance from VA for a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(1) There are mitigating circumstances, and

(2) The reservist submits the circumstances in writing to VA within 1 year from the date VA notifies the reservist that he or she must submit the mitigating circumstances.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525)

(f) *Other courses*. (1) A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), may not receive any educational assistance for pursuit of any of the types of training listed in § 21.7540(b)(3).

(2) VA will not consider the hospital or field work phase of a nursing course, including a course leading to a degree in nursing, to be provided by an institution of higher learning unless—

(i) The hospital or fieldwork phase is an integral part of the course;

(ii) Completion of the hospital or fieldwork phase of the course is a prerequisite to the successful completion of the course;

(iii) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase of the course; and

(iv) The training is under the direction and supervision of the institution of higher learning.

(3) A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), may not receive educational assistance for an enrollment in a course pursued after the reservist has completed the course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study, unless the reservist is pursuing a course or courses leading to a graduate degree or graduate certificate. Such a reservist may receive educational assistance while pursuing a course or courses leading to a graduate degree or graduate certificate (subject to the restrictions in § 21.7620(d)). Equivalent evidence of completion of study may include, but is not limited to, a copy of the reservist's transcript showing that he or she has received passing grades in all courses needed to obtain a baccalaureate degree at the institution of higher learning which he or she has been attending.

(4) No reservist may receive payment of educational assistance from VA for:

(i) An audited course (see § 21.4252(i));

(ii) A new enrollment in a course during a period when approval has been suspended by a State approving agency or VA;

(iii) Pursuit of a course by a nonmatriculated student except as provided in § 21.4252(l);

(iv) An enrollment in a course at an educational institution for which the reservist is an official of such institution authorized to sign certificates of enrollment under 10 U.S.C. chapter 1606;

(v) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201;

(vi) Except as provided in § 21.7620(c), an enrollment in a nonaccredited independent study course; or

(vii) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 10 U.S.C. 16131(c), 16136(b); 38 U.S.C. 3672(a), 3676, 3680(a), 3680A(f), 3680A(g); § 642, Public Law 101–189, 103 Stat. 1458)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29304, June 10, 1996; 62 FR 55762, Oct. 28, 1997; 65 FR 81743, Dec. 27, 2000]

### § 21.7624 Overcharges and restrictions on enrollments.

(a) *Overcharges.* VA may disapprove an educational institution for further enrollments when the educational institution charges or receives from a reservist tuition and fees that exceed the established charges which the educational institution requires from similarly circumstanced nonreservists enrolled in the same course.

(Authority: 10 U.S.C. 2136; 38 U.S.C. 3690; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; secs. 642 (c), (d), 645(a)(1), Pub. L. 101–189, 103 Stat. 1457–1458)

(b) *Restriction on enrollments.* The provisions of § 21.4210(b) apply to any determination by VA as to whether to impose restrictions on approval of enrollments and whether to discontinue payments to reservists already enrolled at an educational institution.

(Authority: 10 U.S.C. 2136; 38 U.S.C. 3690(b); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; secs. 642 (c), (d), 645(a)(1), Pub. L. 101–189, 103 Stat. 1457–1458)

[61 FR 29304, June 10, 1996, as amended at 63 FR 35837, July 1, 1998]

PAYMENTS—EDUCATIONAL ASSISTANCE

### § 21.7630 Educational assistance.

VA will pay educational assistance pursuant to 10 U.S.C. chapter 1606 to an eligible reservist while he or she is pursuing approved courses in a program of

education at the rates specified in § 21.7636 and § 21.7639.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]

**§ 21.7631 Commencing dates.**

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible reservist enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the reservist is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the reservist is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3672, 5103)

(b) *Certification by educational institution—course or subject leads to a standard college degree.* (1) When a student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that—

(i) The published standards of the school require the student to register before reporting,

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered, and

(iii) The first scheduled class for the course or subject in which the student is enrolled begins during the calendar week when, according to the school's academic calendar, classes are generally scheduled to commence for the term.

(3) When a student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for the particular course or subject.

(4) When a student enrolls in a resident course or subject and neither the provisions of paragraph (b)(2) nor (b)(3) of this section apply to the enrollment, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the student is enrolled.

(Authority: 10 U.S.C. 16136(b))

(c) *Certification by educational institution—course does not lead to a standard college degree.* (1) When a reservist enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.

(2) When a reservist enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance in accordance with 38 U.S.C. 3686.

(3) When a reservist enrolls in a program of apprenticeship or other on-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.

(Authority: 10 U.S.C. 16136(b))

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a reservist's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98–525)

(e) *Individuals in a penal institution.* If a reservist is paid a reduced rate of educational assistance under § 21.7639 (d), (e), (f), (g) and (h) of this section, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98–525)

(f) [Reserved]

(g) *Increase (''kicker'') in amount payable.* If a reservist is entitled to an increase (''kicker'') in the monthly rate of educational assistance because he or she has met the requirements of § 21.7636(b), the effective date of that increase (''kicker'') will be the latest of the following dates:

(1) The commencing date of the reservist's award as determined by paragraphs (a) through (g) of this section; or

(2) The first date on which the reservist is entitled to the increase (''kicker'') as determined by the Secretary of the military department concerned; or

(3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 11311, Mar. 20, 1996; 61 FR 29304, June 10, 1996; 62 FR 55520, Oct. 27, 1997; 64 FR 23773, May 4, 1999; 66 FR 38939, July 26, 2001]

### § 21.7633 Suspension or discontinuance of payments.

VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C 16136(b); 38 U.S.C. 3690)

[63 FR 35837, July 1, 1998]

### § 21.7635 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of reservist.* (1) If the reservist receives an advance payment and dies before the end of the period covered by the advance payment, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(2) In all other cases if the reservist dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680(e))

(b) *Course discontinued—course interrupted—course terminated—course not satisfactorily completed or withdrawn from.* (1) If the reservist, for reasons other than being called or ordered to active duty, withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances VA will terminate or reduce educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which grades are assigned.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 102–127) (Aug. 1, 1990)

(2) If the reservist withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses or the reservist withdraws from all courses because he or she is ordered to active duty, VA will terminate educational assistance for—

(i) Residence training: last date of attendance; and

(ii) Independent study: official date of change in status under the practices of the institution of higher learning.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98–525, Pub. L. 102–127) (Aug. 1, 1990)

(3) When a reservist withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a reservist withdraws from an apprenticeship or other on-job training, VA will terminate educational assistance effective the date of last training.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101–189, 103 Stat. 1457–1458)

(5) When a reservist withdraws from flight training, VA will terminate educational assistance effective the date of last instruction.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101–189, 103 Stat. 1457–1458)

(c) *Reduction in the rate of pursuit of the course.* If the reservist reduces the rate of training by withdrawing from part of a course, but continues training in part of the course, the provisions of this paragraph apply.

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the reservist's educational assistance effective on the date the reduction occurred when—

(i) A nonpunitive grade is assigned for the part of the course from which he or she withdraws, and

(A) The reservist withdraws because he or she is ordered to active duty, or

(B) The withdrawal occurs with mitigating circumstances; or

(ii) A punitive grade is assigned for the part of the course from which the reservist withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term, or

(ii) The reservist—

(A) Receives a nonpunitive grade for the part of the course from which he or she withdraws, and

(B) Withdraws without mitigating circumstances, and

(C) Does not withdraw because he or she is ordered to active duty.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 102–127) (Aug. 1, 1990)

(3) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of §21.4138(f) are met. If those requirements are not met, VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98–525, Pub. L. 100–689)

(d) *Nonpunitive grade.* (1) If the reservist receives a nonpunitive grade in a particular course, for any reason other than a withdrawal from it, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies when no mitigating circumstances are found.

(2) If the reservist receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the reservist's educational assistance effective the last date of attendance when mitigating circumstances are found.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98–525, Pub. L. 100–689)(Nov. 18, 1988)

(e) *Discontinued by VA.* If VA discontinues payment to a reservist following the procedures stated in §21.4211(d) and

(g), the date of discontinuance of payment of educational assistance will be—

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance was preceded by suspension.

(2) The end of the month in which the decision to discontinue, made by VA under § 21.7633 or § 21.4211(d) and (g), is effective, if the Director of a VA facility did not suspend payments before the discontinuance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98–525)

(f) *Disapproved by State approving agency*. If a State approving agency disapproves a course in which a reservist is enrolled, the date of discontinuance of payment of educational assistance will be—

(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210 if disapproval was preceded by such a suspension.

(2) The end of the month in which disapproval is effective or VA receives notice of the disapproval, whichever is later, provided that the Director of a VA facility did not suspend payments before the disapproval.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3672(a), 3690; Pub. L. 98–525)

(g) *Disapproval by VA*. If VA disapproves a course in which a reservist is enrolled, the effective date of discontinuance of payment of educational assistance will be—

(1) The date on which the Director of a VA facility first suspended payments, as provided in § 21.4210 of this part, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA facility did not suspend payments before the disapproval.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3671(b), 3672(a), 3690; Pub. L. 98–525)

(h) *Unsatisfactory progress*. If a reservist's progress is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the reservist's enrollment, or

(2) The date on which the reservist's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3474; Pub. L. 98–525)

(i) *False or misleading statements*. If educational assistance is paid as the result of false or misleading statements, see § 21.7658 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98–525)

(j) *Conflicting interests (not waived)*. If an institution of higher learning and VA have conflicting interests as provided in § 21.4005 and § 21.7805 of this part, and VA does not grant the waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the reservist.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3683; Pub. L. 98–525)

(k) *Incarceration in prison or penal institution for conviction of a felony*. (1) The provisions of this paragraph apply to a reservist whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7639(d) of this part.

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the reservist's tuition and fees were paid by a Federal, State or local program,

(ii) The date the reservist is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.7631 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98–525)

(l) *Exhaustion of entitlement*. If a reservist exhausts his or her 36 months of entitlement, the discontinuance date

shall be the date the entitlement is exhausted.

(Authority: 10 U.S.C. 16131(c); Pub. L. 98–525)

(m) *End of eligibility period.* If the reservist's eligibility period ends while the reservist is receiving educational assistance, the date of discontinuance shall be the date on which eligibility ends as determined by §21.7550 and §21.7551 of this part.

(Authority: 10 U.S.C. 16133; Pub. L. 98–525)

(n) *Required certifications not received after certification of enrollment.* (1) If VA does not timely receive a required certification of attendance for a reservist enrolled in a course not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which a certification of the reservist's attendance was received. If VA later receives the certification, VA will make any adjustment on the basis of facts found.

(2) In the case of an advance payment, if VA does not receive verification of enrollment and certificate of delivery of the check within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the reservist failed to enroll, termination will be effective the beginning date of the enrollment period.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(d); Pub. L. 98–525)

(o) *Receipt of financial assistance under 10 U.S.C. 2107.* If the reservist receives financial assistance under 10 U.S.C. 2107, the effective date for discontinuance of payment of educational assistance shall be the first date for which the reservist receives such assistance.

(Authority: 10 U.S.C. 16134; Pub. L. 98–525)

(p) *Failure to participate satisfactorily in required training in Selected Reserve.* If the reservist fails to participate satisfactorily in required training in the Selected Reserve, VA will discontinue payment of educational assistance allowance effective the first date certified by the Department of Defense or the Department of Transportation as the date on which the reservist fails to participate satisfactorily as a member of the Selected Reserve.

(Authority: 10 U.S.C. 16134; Pub. L. 98–525)

(q) *Error-payee's or administrative.* (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the last date on which the reservist was entitled to payment of educational assistance.

(2) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Transportation is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98–525)

(r) *Completion of baccalaureate instruction.* If a reservist who is limited in the types of courses he or she may pursue, as provided in §21.7540 (b)(2) and (b)(3), completes a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study (see §21.7622(f)), VA will discontinue educational assistance effective the day after the date upon which the required course of instruction was completed.

(Authority: 10 U.S.C. 2131; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565; secs. 642 (a), (b), (d), 645(a), (b), Pub. L. 101–189, 103 Stat. 1456–1458)

(s) *Forfeiture for fraud.* If a reservist must forfeit his or her educational assistance due to fraud, the date of discontinuance of payment of educational assistance will be the later of—

(1) The effective date of the award, or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 6103, Pub. L. 98–525)

(t) *Forfeiture for treasonable acts or subversive activities.* If a reservist must

forfeit his or her educational assistance due to treasonable acts or subversive activities, the date of discontinuance of payment of educational assistance will be the later of—

(1) The effective date of the award, or

(2) The day before the date the reservist committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 6104, 6105; Pub. L. 98–525)

(u) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue, VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the reservist's educational assistance.

(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98–525)

(v) *Independent study course loses accreditation.* If the reservist is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency, unless the provisions of § 21.7620 (c)(3) or (c)(4) apply.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680A(a)(4))

(w) [Reserved]

(x) *Reduction following loss of increase (''kicker'').* If a reservist is entitled to an increase (''kicker'') in the monthly rate of basic educational assistance as provided in § 21.7636(b) and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the reservist is no longer entitled to the increase (''kicker'').

(Authority: 10 U.S.C. 16131)

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the reservist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in § 21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in § 21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(z) *Except as otherwise provided.* If the reservist's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of discontinuance of payment of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992; 58 FR 51783, Oct. 5, 1993; 61 FR 29304, June 10, 1996; 62 FR 55520, Oct. 27, 1997; 63 FR 35837, July 1, 1998; 65 FR 5788, Feb. 7, 2000; 65 FR 61101, Oct. 16, 2000; 66 FR 38939, July 26, 2001; 72 FR 39563, July 19, 2007]

### § 21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in § 21.7639, basic educational assistance is payable at the following monthly rates.

(i) For training that occurs after September 30, 2004, and before October 1, 2005:

| Training | Monthly rate |
|---|---|
| Full time | $288.00 |
| ¾ time | 216.00 |
| ½ time | 143.00 |
| ¼ time | 72.00 |

(ii) For training that occurs after September 30, 2005:

| Training | Monthly rate |
|---|---|
| Full time | $297.00 |
| ¾ time | 222.00 |
| ½ time | 147.00 |
| ¼ time | 74.25 |

(2)(i) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time is payable at the following rates.

(A) For training which occurs after September 30, 2004, and before October 1, 2005:

| Training | Monthly rate |
|---|---|
| First 6 months of pursuit of training | $216.00 |
| Second 6 months of pursuit of training | 158.40 |
| Remaining pursuit of training | 100.80 |

(B) For training which occurs after September 30, 2005:

| Training | Monthly rate |
|---|---|
| First 6 months of pursuit of training | $252.45 |
| Second 6 months of pursuit of training | 193.05 |
| Remaining pursuit of training | 133.65 |

(ii) Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

(3) The monthly rate of basic educational assistance payable to a reservist for pursuit of a cooperative course is as follows:

(i) For full-time training that occurs after September 30, 2004, and before October 1, 2005, the rate payable is the rate stated in paragraph (a)(1)(i) of this section.

(ii) For full-time training that occurs after September 30, 2005, the rate payable is the rate stated in paragraph (a)(1)(ii) of this section.

(Authority: 10 U.S.C. 16131(b), (c); sec. 8203(b), Pub. L. 105–178, 112 Stat. 493–494)

(b) *Increase (''kicker'') in educational assistance rates.* (1) The Secretary of the military department concerned may increase the amount of educational assistance stated in paragraph (a) of this section that is payable to a reservist who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel.

(2) The Secretary of the military department concerned—

(i) Will set the amount of the increase (''kicker'') for full-time training, but the increase (''kicker'') may not exceed $350 per month; and

(ii) May set the amount of the increase (''kicker'') payable, for a reservist pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (b)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(1))

(c) *Limitations on payments.* VA may withhold final payment until VA receives proof of the reservist's enrollment and adjusts the reservist's account.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

[61 FR 29305, June 10, 1996, as amended at 62 FR 27964, May 22, 1997; 62 FR 55520, Oct. 27, 1997; 62 FR 66278, Dec. 18, 1997; 64 FR 26297, May 14, 1999; 65 FR 59127, Oct. 4, 2000; 65 FR 60499, Oct. 11, 2000; 66 FR 38937, July 26, 2001; 67 FR 6655, Feb. 13, 2002; 68 FR 42978, July 21, 2003; 69 FR 62205, Oct. 25, 2004; 72 FR 39563, July 19, 2007]

### §21.7639 Conditions which result in reduced rates or no payment.

The payment of educational assistance at the monthly rates established in §21.7636 shall be subject to reduction, whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* (1) Withdrawal from a course or receipt of a nonpunitive grade affects payments to a reservist. VA will not pay benefits to a reservist for pursuit of a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.

(i) The reservist withdraws because he or she is ordered to active duty; or

(ii) Both of the following exist.

(A) There are mitigating circumstances, and

(B) The reservist submits a description of the circumstances in writing to VA either within one year from the date VA notifies the reservist that he or she must submit the mitigating circumstances, or at a later date if the reservist is able to show good cause why

the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471, 3680(a), 5101, 5113; Pub. L. 102–127) (Aug. 1, 1990))

(2) If VA considers that mitigating circumstances exist because the reservist withdrew during a drop-add period or because the withdrawal constitutes the first withdrawal of no more than six credits after May 31, 1989, the reservist is not subject to the reporting requirement found in paragraph (b)(1)(ii)(B) of this section.

(Authority: 10 U.S.C. 16130(b), 38 U.S.C. 3680(a)) (June. 1, 1989)

(b) *No education assistance for some incarcerated reservists.* VA will pay no educational assistance to reservists who are incarcerated and who are training less than one-half time. In addition, VA will pay no educational assistance to a reservist who—

(1) Is incarcerated in Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98–525)

(c) *Reduced educational assistance for some incarcerated reservists.* (1) VA will pay reduced educational assistance to a reservist who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the reservist pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but for which the reservist must pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a reservist is the lesser of the following:

(i) The monthly rate of the portion of tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of any charges to the reservist for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate as stated in § 21.7636(a) and any increase payable under § 21.7636(b).

(3) In determining the monthly rate stated in paragraph (c)(2)(i) of this paragraph, VA will—

(i) Add the portion of tuition and fees that are not paid by a Federal program (other than one administered by VA) for the reservist's enrollment period to the total cost to the reservist for the cost of necessary supplies, books and equipment, and

(ii) Divide the figure obtained in paragraph (c)(3)(i) of this paragraph by the number of months and fractions of a month in the reservist's enrollment period.

(Authority: 10 U.S.C. 16131(i)(1), 16136(b); 38 U.S.C. 3482(g))

(d)(1) A reservist pursuing only independent study and whose enrollment begins after June 30, 1993, shall be paid educational assistance on the basis of his or her training time.

(2) No payments may be made to a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), and who is pursuing independent study unless he or she is concurrently pursuing one or more courses offered through resident training at an institution of higher learning.

(Authority: 10 U.S.C. 2131; 10 U.S.C. 2136(b); 38 U.S.C. 3532, 3532 note, 3680; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; secs. 642, 645 (a), (b), Pub. L. 101–189, 103 Stat. 1457–1458)

(e) *Payment for correspondence courses.* A reservist who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course shall be paid 55 percent of

the established charge which the educational institution requires nonreservists to pay for the lessons—

(1) Which the reservist has completed;

(2) Which the educational institution has serviced; and

(3) For which payment is due.

(Authority: 10 U.S.C. 2131(f); sec. 642 (b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(f) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any calendar month in which a reservist pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally—

(i) The rates specified in § 21.7636(a)(2); and

(ii) Any increase set by the Secretary of the military department concerned as described in § 21.7636(b).

(2) In making the computations required by paragraph (f)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(3) For the purpose of this paragraph, hours worked include only—

(i) The training hours the reservist worked; and

(ii) All hours of the reservist's related training which occurred during the standard workweek and for which the reservist received wages. (See § 21.7636(a)(2)(ii) as to the requirements for full-time training.)

(Authority: 10 U.S.C. 2131(d)(2), 16131(i)(1); sec. 642 (b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(g) *Flight training course.* A reservist who is pursuing a flight training course shall be paid 60 percent of the established charge for tuition and fees (other than tuition and fees charged for or attributable to solo flying hours) which the flight school requires similarly circumstanced nonreservists enrolled in the same course to pay.

(Authority: 10 U.S.C. 16131(g))

(h) *Membership in the Senior Reserve Officers' Training Corps.* A reservist may not receive educational assistance for any period for which he or she receives financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps.

(Authority: 10 U.S.C. 16134)

(i) *Course not offered by an institution of higher learning or not leading to an identifiable educational, professional, or vocational objective.* A reservist who is limited in the types of courses he or she may pursue, as described in § 21.7540(b)(2) and (b)(3), may not receive educational assistance for instruction in a program of education unless it is offered at an institution of higher learning. The instruction must lead to an identifiable educational, professional, or vocational objective, but does not have to lead to a standard college degree.

(Authority: 10 U.S.C. 2131(b), 2136(b); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; secs. 642 (b)(1), (c), (d), 645(a), (b), Pub. L. 101–189, 103 Stat. 1456–1458)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57107, Dec. 3, 1992; 58 FR 51783, Oct. 5, 1993; 58 FR 65930, Dec. 17, 1993; 61 FR 29305, June 10, 1996; 61 FR 29482, June 11, 1996; 62 FR 55521, Oct. 27, 1997; 62 FR 55762, Oct. 28, 1997]

### § 21.7640 Release of payments.

(a) *Payments are dependent upon certifications, reports, and verifications of pursuit.* When certifications, reports, or verifications of pursuit are mentioned in this paragraph, the certifications, reports, and verifications of pursuit are to be made in the form prescribed by the Secretary of Veterans Affairs.

(1) VA will pay educational assistance to a reservist who is pursuing a standard college degree only after the educational institution has certified his or her enrollment.

(2) VA will pay educational assistance to a reservist who is pursuing a course not leading to a standard college degree (other than a correspondence course, a course of flight training, or an apprenticeship or other on-job training) only after:

(i) The educational institution has certified his or her enrollment in the form prescribed by the Secretary of Veterans Affairs; and

(ii) VA has received a report by the reservist, which report is endorsed by the educational institution, of—

(A) Each day of absence that occurred before December 18, 1989; or

(B) A verification of pursuit from the reservist of training that occurred on or after December 18, 1989.

(3) VA will pay educational assistance to a reservist pursuing a program of apprenticeship or other on-job training only after:

(i) The training establishment has certified his or her enrollment in the training program in the form prescribed by the Secretary of Veterans Affairs; and

(ii) VA has received certification by the reservist and the training establishment of the reservist's hours worked.

(4) VA will pay educational assistance to a reservist who is pursuing a correspondence course only after:

(i) The educational institution has certified his or her enrollment in the form prescribed by the Secretary of Veterans Affairs; and

(ii) VA has received a certification by the reservist, which certification is endorsed by the educational institution, as to the number of lessons completed and serviced by the educational institution.

(5) VA will pay educational assistance to a reservist who is pursuing a flight course only after:

(i) The educational institution certifies the reservist's enrollment in the form prescribed by the Secretary of Veterans Affairs; and

(ii) VA has received a report by the reservist of the flight training the reservist has completed, which report is endorsed by the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(b) *Payment for intervals and temporary school closings.* In administering 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4138(f) when determining whether a reservist is entitled to payment for an interval or temporary school closing.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(c) *Payee.* (1) VA will make payment to the reservist or to a duly appointed fudiciary. VA will make direct payment to the reservist even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 (a), (b), (c) and (e) of this part to 10 U.S.C. chapter 1606 in a manner not inconsistent with the way in which they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680, 5301(a))

(d) *Advance payments.* VA will apply the provisions of § 21.4138(a) in making advance payments to reservists.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(e) *Frequency of payment.* Except as provided in § 21.4138(a), VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g))

(f) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(Approved by the Office of Management and Budget under control number 2900–0073)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29306, June 10, 1996; 61 FR 29482, June 11, 1996; 64 FR 52652, Sept. 30, 1999; 72 FR 39564, July 19, 2007; 73 FR 65269, Nov. 3, 2008]

### § 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 1606 and any of the following provisions of law—

(1) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(2) 38 U.S.C. 31 (Vocational Rehabilitation and Employment);

(3) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(4) 38 U.S.C. 33 (Post-9/11 GI Bill);

(5) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);

(6) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(7) 10 U.S.C. 106a (Educational Assistance Test Program);

(8) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(9) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(10) The Omnibus Diplomatic Security Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681)

(b) When paragraph (a) of this section applies, the reservist must choose which benefit he or she wishes to receive. The reservist may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The reservist may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(Authority: 10 U.S.C. 16134; Pub. L. 98–525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98–525)

(e) *Service Members Occupational Conversion and Training Act of 1992.* A reservist may not receive educational assistance under the Montgomery GI Bill—Selected Reserve program during the period for which benefits are payable under the Service Members Occupational Conversion and Training Act of 1992.

(Authority: Sec. 4492(a), Pub. L. 102–484, 106 Stat. 2765–2766)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 61 FR 20729, May 8, 1996; 61 FR 29307, June 10, 1996; 74 FR 14671, Mar. 31, 2009]

### § 21.7644 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§ 21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36. See § 21.7633.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690(b); Pub. L. 98–525)

(b) *Penalties are not overpayments.* The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund—

(1) Is not an overpayment for VA purposes, and

(2) Is not subject to waiver by VA under § 1.957 of this chapter.

(Authority: 10 U.S.C. 16135; Pub. L. 98–525)

(c) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless—

(i) The overpayment is waived as provided in § 1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if VA determines that the overpayment was made as the result of—

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course, or discontinuance or interruption of a course by the reservist.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685; Pub. L. 98–525)

(d) *Waiver of recovery of overpayments.* (1) Except as stated in paragraph (b) of this section in determining whether an overpayment should be waived or recovered from a reservist, VA will apply the provisions of § 1.957 of this chapter.

(2) In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of § 21.4009(a)(2), (3), (4), and (5), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this part to overpayments of educational assistance under 10 U.S.C. chapter 1606 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685, 5302; Pub. L. 98–525)

CROSS REFERENCE: Entitlement charges. See § 21.7576(c) of this part offering training to veterans and servicemembers under 38 U.S.C. ch. 34.

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]

PURSUIT OF COURSE AND REQUIRED REPORTS

### § 21.7650 Pursuit.

The reservist is entitled to educational assistance only for actual pursuant of a program of educational. Verification is accomplished by various certifications.

(Authority: 10 U.S.C. 16131(a); Pub. L. 98–525)

### § 21.7652 Certification of enrollment and verification of pursuit.

As stated in § 21.7640 of this part, the educational institution must certify the reservist's enrollment before he or she may receive educational assistance. Nothing in this section or in any section in part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(a) *Content of certification of entrance or reentrance.* The certification of entrance or reentrance must clearly specify:

(1) The course;

(2) The starting and ending dates of the enrollment period;

(3) The credit hours or clock hours being pursued by the reservist;

(4) The amount of tuition, fees and the cost of books, supplies and equipment charged to a reservist who is incarcerated in a Federal, State or local prison or jail for conviction of a felony; and

(5) Such other information as the Secretary may find is necessary to determine the reservist's monthly rate of educational assistance.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g), 3680; Pub. L. 98–525)

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Educational institutions organized on a term, quarter or semester basis generally shall report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month, or if the reservist elects not to be paid for the intervals between terms. The educational institution must submit a separate enrollment certification for each term, quarter or semester when the certification is for a reservist who is incarcerated in a Federal, State or local prison or jail for conviction of a felony.

(2) Educational institutions organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any interval designated in its approval data as breaks between school years.

(3) When a reservist enrolls in independent study leading to a standard college degree concurrently with resident training, the educational institution's certification will include—

(i) The enrollment date, and

(ii) The ending date for the period being certified. If the educational institution has not prescribed maximum time for completion of the independent study portion of the enrollment, the certification must include an ending date for the independent study based on the educational institution's estimate for completion.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3684; Pub. L. 98–525)

(c) *Verification of pursuit.* (1) A reservist who is pursuing a course leading to a standard college degree must have his or her continued enrollment in and pursuit of the course verified for the entire enrollment period. Verification of continued enrollment will be made at least once a year and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a reservist who completed, interrupted or terminated his or her course, any communication from the reservist or other authorized person notifying the VA of the reservist's completion of a course as scheduled or an earlier termination date, will be accepted to terminate payments accordingly.

(2) The verification of pursuit will also include a report on the following items when applicable:

(i) Continued enrollment in and pursuit of the course,

(ii) Conduct and progress (See § 21.7653(c)),

(iii) Date of interruption or termination of training (See § 21.7656(a)),

(iv) Changes in number of credit hours or clock hours of attendance (See § 21.7656(a)), and

(v) Any other changes or modifications in the course as certified at enrollment.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98–525)

[52 FR 34740, Sept. 8, 1988, as amended at 61 FR 29482, June 11, 1996]

**§ 21.7653 Progress, conduct, and attendance.**

(a) *Satisfactory pursuit of program.* In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory progress. Progress is unsatisfactory if the reservist does not satisfactorily progress according to the regulatory prescribed standards of the educational institution he or she is attending.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3474; Pub. L. 98–525)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the reservist will no longer be retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, the VA will discontinue educational assistance, unless further development establishes that the educational institution's action is retaliatory.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3474; Pub. L. 98–525)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory course attendance. VA will discontinue educational assistance if the reservist does not maintain satisfactory course attendance. Attendance is unsatisfactory if the reservist does not attend according to the regularly prescribed standards of the educational institution in which he or she is enrolled.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3474; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101–189, 103 Stat. 1457–1458)

(d) *Reports.* At times the unsatisfactory progress, conduct, or course attendance of a reservist is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with § 21.7656(a). If the reservist continues in

training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to VA within the time allowed by paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) A reservist's progress may become unsatisfactory as a result of the grades he or she receives. The educational institution shall report such unsatisfactory progress to VA in time for VA to receive it before the earlier of the following dates is reached:

(i) Thirty days from the date on which the school official who is responsible for determining whether a student is making progress first receives the final grade report which establishes that the reservist is not progressing satisfactorily; or

(ii) Sixty days from the last day of the enrollment period during which the reservist earned the grades that caused him or her to meet the unsatisfactory progress standards.

(2) If the unsatisfactory progress of the reservist is caused solely by any factors other than the grades which he or she receives, the educational institution shall report the unsatisfactory progress in time for VA to receive it within 30 days of the date on which the progress of the reservist becomes unsatisfactory.

(3) The educational institution shall report the unsatisfactory conduct or attendance of the reservist to VA in time for VA to receive it within 30 days of the date on which the conduct or attendance of the reservist becomes unsatisfactory.

(e) *Reentrance after discontinuance.* In order for a reservist to receive educational assistance following discontinuance for unsatisfactory progress, conduct, or attendance, the provisions of this paragraph must be met.

(1) The reservist's subsequent reentrance into a program of education may be for the same program, for a revised program, or for an entirely different program, depending on the cause of the discontinuance and removal of that cause.

(2) A reservist may reenter following discontinuance because of unsatisfactory attendance, conduct, or progress when either of the following sets of conditions exists:

(i) The reservist resumes enrollment at the same educational institution in the same program of education and the educational institution has both approved the reservist's reenrollment and certified it to VA; or

(ii) In all other cases, VA determines that—

(A) The cause of the unsatisfactory attendance, conduct, or progress in the previous program has been removed and is not likely to recur; and

(B) The program which the reservist now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3474; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101–189, 103 Stat. 1457–1458)

(Approved by the Office of Management and Budget under control number 2900–0552)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29307, June 10, 1996]

### § 21.7654 Pursuit and absences.

Except as provided in this section, a reservist must submit a verification to VA each month of his or her enrollment during the period for which the reservist is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* A reservist does not have to submit a monthly verification as described in the introductory text of this section when the reservist—

(1) Is enrolled in a correspondence course; or

(2) Has received an advance payment for the training completed during a month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(a), (g))

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all reservists will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The date of interruption or termination of training;

(iii) Except as provided in §21.7656(a), changes in the number of credit hours or in the number of clock hours of attendance;

(iv) Nonpunitive grades; and

(v) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must:

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the reservist on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone or electronically in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(c) *Additional requirements for apprenticeships and other on-job training programs.* (1) When a reservist is pursuing an apprenticeship or other on-job training, he or she must monthly certify training by reporting the number of hours worked.

(2) The information provided by the reservist must be verified by the training establishment.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642(c), (d), Pub. L. 101–189, 103 Stat. 1457–1458)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

(Approved by the Office of Management and Budget under control number 2900–0597)

[61 FR 29308, June 10, 1996, as amended at 65 FR 61101, Oct. 16, 2001]

### §21.7656 Other required reports.

(a) *Reports from reservists.* (1) A reservist enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A reservist not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(b) *Interruptions, terminations or changes in hours of credit or attendance.* When a reservist interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to VA.

(1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a reservist:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a reservist's hours of credit or attendance when:

(i) The reservist is enrolled full time in a program of education for a standard term, quarter, or semester before the change; and

(ii) The reservist continues to be enrolled full time after the change.

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

(4) If the educational institution has certified the reservist's enrollment for more than one term, quarter or semester and the reservist interrupts his or

her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to VA in time for VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester.

(5) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to VA in time for VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(c) *Nonpunitive grades.* An educational institution may assign a nonpunitive grade for a course or subject in which the reservist is enrolled even though the reservist does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in time for VA to receive it before the earlier of the following dates is reached:

(1) 30 days from the date on which the educational institution assigns the grade, or

(2) 60 days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3684; Pub. L. 98–525)

(Approved by the Office of Management and Budget under control numbers 2900–0612 and 2900–0597)

[53 FR 34740, Sept. 8, 1988, as amended at 65 FR 61101, Oct. 16, 2001]

### § 21.7658 False, late, or missing reports.

(a) *Reservist.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 of this part to a reservist or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 10 U.S.C. chapter 1606 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 34 or 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680, 3690, 6103; Pub. L. 98–525)

(b) *Educational institution or training establishment.* (1) VA may hold an educational institution liable for overpayments which result from a willful or negligent:

(i) Failure of the educational institution to report, excessive absences from a course or discontinuance or interruption of a course by a reservist; or

(ii) False certification by the educational institution. See § 21.7644(c).

(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to reservists already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3690)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 63 FR 35837, July 1, 1998]

### § 21.7659 Reporting fee.

In determining the amount of the reporting fee payable to educational institutions for furnishing required reports, VA will apply the provisions of § 21.4206.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

[62 FR 55762, Oct. 28, 1997]

## COURSE ASSESSMENT

### § 21.7670 Measurement of courses leading to a standard, undergraduate college degree.

Except as provided in § 21.7672, VA will measure a reservist's courses as stated in this section.

(a) *Fourteen semester hours are full time.* Unless 12 or 13 semester hours are full time as provided in paragraphs (b) and (c) of this section, or unless paragraphs (d) or (e) of this section apply to

measurement of the reservist's enrollment VA will measure a reservist's enrollment as follows:

(1) 14 or more semester hours or the equivalent are full-time training,

(2) 10 through 13 semester hours or the equivalent are three-quarter-time training;

(3) 7 through 9 semester hours or the equivalent are half-time training; and

(4) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3688(a); Pub. L. 98–525, Pub. L. 100–689)(Nov. 18, 1988)

(b) *Thirteen semester hours are full time.* (1) VA will consider that 13 semester hours or the equivalent are full-time training when the educational institution certifies that all undergraduate students enrolled for 13 semester hours or the equivalent are

(i) Charged full-time tuition, or

(ii) Considered full-time for other administrative purposes.

(2) When 13 semester hours or the equivalent are full-time training—

(i) 10 through 12 semester hours or the equivalent are three-quarter-time training;

(ii) 7 through 9 semester hours or the equivalent are half-time training; and

(iii) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3688(a); Pub. L. 98–525, Pub. L. 100–689)(Nov. 18, 1988)

(c) *Twelve semester hours are full time.* (1) VA will consider that 12 semester hours or the equivalent are full-time training when the educational institution certifies that all undergraduate students enrolled for 12 semester hours or the equivalent are—

(i) Charged full-time tuition, or

(ii) Considered full time for other administrative purposes.

(2) When 12 semester hours or the equivalent are full-time training—

(i) 9 through 11 semester hours or the equivalent are three-quarter-time training;

(ii) 6 through 8 semester hours or the equivalent are half-time training; and

(iii) 1 through 5 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3688(a); Pub. L. 98–525, Pub. L. 100–689)

(d) *Other requirements.* Notwithstanding any other provision of this section, in administering benefits payable under 10 U.S.C. chapter 1606, VA shall apply the provisions of § 21.4272.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688(b))

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9629, Mar. 7, 1991; 57 FR 57107, Dec. 3, 1992; 61 FR 29308, June 10, 1996; 62 FR 55762, Oct. 28, 1997]

### § 21.7672 Measurement of courses not leading to a standard college degree.

(a) *Overview.* (1) Courses not leading to a standard college degree may be measured on either a clock-hour basis, or a credit-hour basis or a combination of both. Factors which the Department of Veterans Affairs must include in determining the proper basis for measurement include whether the courses are accredited; whether the course could be credited toward a standard college degree; and whether the course is offered on a standard quarter or semester-hour basis.

(2) In determining which is the correct basis for measuring a reservist's enrollment, VA will first examine whether credit-hour measurement is appropriate, as provided in paragraph (b) of this section.

(3) If it is not appropriate to measure a reservist's enrollment on a credit-hour basis, VA will measure the enrollment on a clock-hour basis as described in paragraph (c) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688(b))

(b) *Credit-hour measurement—standard method.* (1) When all the conditions of paragraph (b)(1) of this section are met, the Department of Veterans Affairs will—

(i) Measure the reservist's enrollment in the same manner as collegiate undergraduate courses are measured in § 21.7670 (a), (b), and (c).

(ii) Apply the provisions of § 21.4272(g) if one or more of the reservist's courses are offered during a nonstandard term.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688)

(2) For new enrollments beginning on or after July 1, 1993, when a course is offered by an institution of higher learning in residence on a standard quarter- or semester-hour basis, VA will measure a reservist's enrollment in a course not leading to a standard college degree on the same credit-hour basis as courses leading to a standard undergraduate degree, as provided in § 21.7670.

(3) For new enrollments beginning on or after July 1, 1993, when a course is offered in residence on a standard quarter- or semester-hour basis by an educational institution which is not an institution of higher learning, VA also will measure on a credit-hour basis as provided in § 21.7670 a reservist's enrollment in a course not leading to a standard college degree, provided that the educational institution requires at least the same number of clock-hours of attendance as required in paragraph (c) of this section. If the educational institution does not require at least the same number of clock-hours of attendance as required in paragraph (c) of this section, VA will not apply the provisions of § 21.7670, but will measure the course according to paragraph (c) of this section.

(4) VA will apply the provisions of § 21.4272(g) to new enrollments beginning on or after July 1, 1993, if one or more of the reservist's courses are offered during a nonstandard term.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688(a)(7))

(c) *Clock-hour measurement.* The provisions of this paragraph apply to all enrollments in courses not leading to a standard college degree. If VA concludes that the courses in which a reservist is enrolled do not qualify for credit-hour measurement, VA shall measure those courses as follows. (Supervised study shall be excluded from measurement of all courses to which this paragraph applies).

(1) If shop practice is an integral part of the course—

(i) Full-time training shall be 22 clock hours attendance with not more than 2½ hours rest period allowance;

(ii) Three-quarter-time training shall be 16 through 21 clock hours attendance with not more than 2 hours rest period allowance;

(iii) Half-time training shall be 11 through 15 clock hours attendance with not more than 1¼ hours rest period allowance; and

(iv) One-quarter-time training shall be 1 through 10 clock hours attendance. For attendance of 6 through 10 clock hours, there shall be not more than one quarter hour rest period allowance. For attendance of 1 through 5 clock hours, there shall be no rest period allowance.

(2) If theory and class instruction predominates—

(i) Full-time training is 18 clock hours net instruction;

(ii) Three-quarter-time training is 13 through 17 clock hours net instruction;

(iii) Half-time training is 9 through 12 clock hours net instruction; and

(iv) Less than half-time training is 1 through 8 clock hours net instruction. In measuring net instruction for this paragraph there will be included customary intervals not to exceed 10 minutes between classes: however, supervised study must be excluded.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688)

[56 FR 9629, Mar. 7, 1991, as amended at 57 FR 46985, Oct. 14, 1992; 61 FR 29308, June 10, 1996; 61 FR 29482, June 11, 1996]

### § 21.7673 Measurement of concurrent enrollments.

(a) *Conversion of units of measurement required.* Where a reservist enrolls concurrently in courses offered by two schools and the standards for measurement of the courses pursued concurrently in the two schools are different, the Department of Veterans Affairs will measure the reservist's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the reservist is pursuing at the primary institution. This conversion will be accomplished as follows:

(1) If VA measures the course at the primary institution on a credit-hour

basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in §21.7672(b)), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of §21.7672(b), VA will convert the credit hours to clock hours to determine the reservist's training time.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require the Department of Veteran Affairs to convert clock hours, it will do so by—

(1) Dividing the number of credit hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require the Department of Veterans Affairs to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688)

(d) *Standards for measurement the same.* If VA measures the courses pursued at both institutions on either a clock-hour basis or a credit-hour basis, VA will measure the reservist's enrollment by adding together the units of measurement for the courses in the second school and the units of measurement for courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688)

[56 FR 9632, Mar. 7, 1991, as amended at 61 FR 29310, June 10, 1996]

### §21.7674 Measurement of practical training courses.

(a) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate. The clock hours of attendance may include academic class time, clinical training, and supervised study periods.

(2) Courses offered by institutions of higher learning which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be measured on credit hours or clock hours of attendance per week whichever is appropriate.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688; Pub. L. 98–525)

(b) *Medical and dental assistants courses for VA.* Programs approved in accordance with the provisions of §21.7720(b)(9) will be measured on a clock-hour basis as provided in §21.7672. However, the program will be regarded as full-time institutional training, provided the combined total of the classroom and other formal instruction portion of the program and the on-the-job portion of the program requires 30 or more clock hours of attendance per week.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688; Pub. L. 98–525)

(c) *Other practical training courses.* These courses will be measured in semester hours of credit or clock hours of attendance per week, whichever is appropriate.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3688; Pub. L. 98–525

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29310, June 10, 1996]

STATE APPROVING AGENCIES

### § 21.7700 State approving agencies.

VA and State approving agencies have the same general responsibilities for approving courses for training under 38 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994) as they do for approving courses for training under 38 U.S.C. chapter 30 or 32. Accordingly, in administering 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), VA will apply the provisions of the following sections:

(a) § 21.4150—Designation,

(b) § 21.4151—Cooperation,

(c) § 21.4152—Control by agencies of the United States,

(d) § 21.4153—Reimbursement of expenses,

(e) Section 21.4154—Report of activities,

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3670 through 3676)

[53 FR 34740, Sept. 8, 1988, as amended at 55 FR 48844, Nov. 23, 1990; 61 FR 29310, June 10, 1996]

APPROVAL OF COURSES

### § 21.7720 Course approval.

(a) *Courses must be approved.* (1) A course of education offered by an educational institution must be approved by—

(i) The State approving agency for the State in which the educational institution is located; or

(ii) The State approving agency which has appropriate approval authority; or

(iii) VA, where appropriate.

(2) In determining when approval authority rests with the State approving agency or VA, the provisions of § 21.4250 (b)(3), (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) apply.

(3) A course approved under 38 U.S.C. chapter 36 is approved for purposes of 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994).

(Authority: 10 U.S.C. 2131(c), 2136(b); 16131(c)(1), 16136(b); 38 U.S.C. 3672; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101–189, 103 Stat. 1456–1458)

(b) *Course approval criteria.* In administering benefits payable under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), VA and, where appropriate, the State approving agencies, shall apply the following sections:

(1) § 21.4250 (except paragraph (c)(1))—Approval of courses;

(2) § 21.4251—Period of operation of course;

(3) § 21.4253 (except those portions of paragraphs (b) and (f) that permit approval of a course leading to a high school diploma)—Accredited courses;

(4) § 21.4254—Nonaccredited courses;

(5) § 21.4255—Refund policy; nonaccredited courses;

(6) § 21.4258—Notice of approval;

(7) § 21.4259—Suspension or disapproval;

(8) § 21.4260—Courses in foreign countries;

(9) § 21.4261—Apprentice courses;

(10) § 21.4262—Other training on-the-job courses;

(11) § 21.4265—Practical training approved as institutional training or on-job training;

(12) § 21.4266—Courses offered at subsidiary branches or extensions; and

(13) § 21.4267—Approval of independent study.

(Authority: 10 U.S.C. 16131(c)(1), 16136(b); 38 U.S.C. 3670 through 3676)

[61 FR 29310, June 10, 1996, as amended at 62 FR 55762, Oct. 28, 1997]

### § 21.7722 Courses and enrollments which may not be approved.

(a) The Secretary of Veterans Affairs may not approve an enrollment by a reservist in, and a State approving agency may not approve for training under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994):

(1) A bartending or personality development course;

(2) A course offered by radio;

(3) Except for enrollments in a nurse's aide course approved pursuant to § 21.4253(a)(5), an institutional course for the objective of nurse's aide or a nonaccredited nursing course which does not meet the licensing requirements in the State where the course is offered; or

(4) Effective October 29, 1992, a nonaccredited course or unit subject offered entirely or partly by independent study. However, see §§ 21.7620(c) and 21.7622(f) concerning payment of educational assistance to reservists enrolled in such a course.

(Authority: 10 U.S.C. 16131(c)(1), 16136(b); 38 U.S.C. 3452)

(b) A State approving agency (or VA when acting as a State approving agency) may approve the following courses for training under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), but VA may not approve an enrollment in any of these courses by a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540 (b)(2) and (b)(3):

(1) A correspondence course;

(2) A cooperative course;

(3) An apprenticeship or other on-job training program;

(4) A nursing course offered by an autonomous school of nursing;

(5) A medical or dental specialty course not offered by an institution of higher learning;

(6) A refresher, remedial, or deficiency course; or

(7) A course or combination of courses consisting solely of independent study.

(Authority: 10 U.S.C. 2131(c), 2136(b), 16131(c)(1), 16136(b); 38 U.S.C. 3670 through 3676; sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101–189, 103 Stat. 1456–1458)

[61 FR 29310, June 10, 1996]

ADMINISTRATIVE

### § 21.7801 Delegation of authority.

(a) *General delegation of authority*. Except as otherwise provided, authority is delegated to the Under Secretary for Benefits of VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA designated by the Under Secretary for Benefits to make findings and decisions under 10 U.S.C. chapter 1606 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter to the extent that the program is administered by VA.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 512(a); Pub. L. 98–525)

(b) *Other delegations of authority*. In administering benefits payable under 10 U.S.C. chapter 1606, VA shall apply § 21.4001(b), (c)(1), (2), and (3) (in part), and (f) in the same manner as those paragraphs are applied in the administration of 38 U.S.C. chapter 34.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 512(a); 3696; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29483, June 11, 1996]

### § 21.7802 Finality of decisions.

(a) *Agency decisions generally are binding*. The decision of the VA facility of original jurisdiction on which an action is based—

(1) Will be final,

(2) Will be binding upon all facilities of VA as to conclusions based on evidence on file at that time, and

(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7803. (See §§19.192 and 19.193 of this chapter).

(Authority: 38 U.S.C. 511)

(b) *Decisions of an Activity within the VA*. Current determinations of pertinent elements of eligibility for a program of education made by a VA adjudicative activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 511)

(c) *Determinations of satisfactory participation*. A determination made by a

competent military or naval authority or by the Coast Guard as to whether or not an individual is participating satisfactorily in required training as a member of the Selected Reserve is binding upon VA.

(Authority: 10 U.S.C. 16134; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29483, June 11, 1996]

### § 21.7803 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 511)

### § 21.7805 Conflicting interests.

In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4005 in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3683; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29483, June 11, 1996]

### § 21.7807 Examination of records.

In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4209 in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]

## Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans and Veterans with Covered Service in Korea—Spina Bifida and Covered Birth Defects

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

SOURCE: 67 FR 72565, Dec. 6, 2002, unless otherwise noted.

GENERAL

### § 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

*Covered birth defect* means the same as defined at § 3.815(c)(3) of this title.

*Eligible child* means, as appropriate, either an *individual* as defined at § 3.814(c)(3) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

*Employment assistance* means employment counseling, placement and post-placement services, and personal and work adjustment training.

*Institution of higher education* has the same meaning that § 21.4200 provides for the term *institution of higher learning*.

*Program of employment services* means the services an eligible child may receive if the child's entire program consists only of employment assistance.

*Program participant* means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

*Spina bifida* means the same as defined at § 3.814(c)(4) of this title.

*Veteran with covered service in Korea* means a veteran defined at § 3.814(c)(2) of this title.

*Vietnam veteran* means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

*Vocational training program* means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable an

eligible child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

*VR&E* refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821, 1831)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);

(2) Program of education;

(3) Rehabilitation facility;

(4) School, educational institution, or institution;

(5) Training establishment;

(6) Vocational goal;

(7) VRC (Vocational rehabilitation counselor); and

(8) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1831)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

### § 21.8012 Vocational training program for certain children of Vietnam veterans and veterans with covered service in Korea—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814, 1821)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

### § 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran or veteran with covered service in Korea (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran or veteran with covered service in Korea's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1821, 1832, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0579)

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1831)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

### § 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.

[74 FR 31857, July 6, 2009]

### § 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1834)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

BASIC ENTITLEMENT REQUIREMENTS

### § 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a).

(1) The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(i) Section 21.250(a) and (b)(2);

(ii) Section 21.252;

(iii) Section 21.254;

(iv) Section 21.256 (not including paragraph (e)(2));

(v) Section 21.257; and

(vi) Section 21.258.

(2) For purposes of this subpart, the requirements for application of § 21.257(e)(1) and (2) are deemed met for an individual in a self-employment program regardless of whether the individual is described in § 21.257(b), if the individual has been determined by VA to have limitations affecting employability arising from the effects of the individual's spina bifida and/or other covered birth defect(s) which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and

does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and becomes suitably employed, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage*—(1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

[67 FR 72565, Dec. 6, 2002, as amended at 75 FR 3170, Jan. 20, 2010]

### § 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1832)

[67 FR 72565, Dec. 6, 2002, as amended at 76 FR 4250, Jan. 25, 2011]

## EVALUATION

### § 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

**§ 21.8032 Evaluations.**

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(3) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

[67 FR 72565, Dec. 6, 2002, as amended at 72 FR 14043, Mar. 26, 2007]

SERVICES AND ASSISTANCE TO PROGRAM PARTICIPANTS

**§ 21.8050 Scope of training, services, and assistance.**

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the

pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

DURATION OF VOCATIONAL TRAINING

**§21.8070 Basic duration of a vocational training program.**

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of §21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as §21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as §21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in §21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

**§21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.**

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under §21.8080. A

change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

### § 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

## INDIVIDUALIZED WRITTEN PLAN OF VOCATIONAL REHABILITATION

### § 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for

a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

**§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.**

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying

other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

COUNSELING

**§ 21.8100 Counseling.**

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

VOCATIONAL TRAINING, SERVICES, AND ASSISTANCE

**§ 21.8120 Vocational training, services, and assistance.**

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words ''under § 21.282'' in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

EVALUATION AND IMPROVEMENT OF VOCATIONAL POTENTIAL

**§21.8140 Evaluation and improvement of vocational potential.**

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment pursuant to §§17.900 through 17.905 of this title for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of §21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: §21.142(a) and (b); §21.144; §21.146; §21.148(a) and (c); §21.150 other than paragraph (b); §21.152 other than paragraph (b); §21.154 other than paragraph (b); and §21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

SUPPLIES

**§21.8210 Supplies.**

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:

(1) An initial or extended evaluation;

(2) Vocational training, services, and assistance to reach the point of employability; or

(3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;

(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;

(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

PROGRAM COSTS

### § 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

VOCATIONAL TRAINING PROGRAM ENTRANCE, TERMINATION, AND RESOURCES

### § 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

### § 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:

(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.

(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.

(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.

(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or

other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

**§21.8284 Additional vocational training.**

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in §21.8072(b), only under one of the following conditions:

(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;

(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;

(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;

(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or

(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:

(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

**§21.8286 Training resources.**

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of §21.146 and §§21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of §21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of §21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent §21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

RATE OF PURSUIT

**§21.8310 Rate of pursuit.**

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during

development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

AUTHORIZATION OF SERVICES

**§ 21.8320 Authorization of services.**

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

LEAVES OF ABSENCE

**§ 21.8340 Leaves of absence.**

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, VA suspends the running of the basic 24-month period of entitlement, plus any extensions thereto, until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

SATISFACTORY CONDUCT AND COOPERATION

**§ 21.8360 Satisfactory conduct and cooperation.**

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

TRANSPORTATION SERVICES

**§ 21.8370 Authorization of transportation services.**

(a) *General.* VA authorizes transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* If a child is eligible for reimbursement of transportation services both under this section and under § 21.154, the child will receive only the benefit under § 21.154.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0580)

(Authority: 38 U.S.C. 1804(c), 1814)

ADDITIONAL APPLICABLE REGULATIONS

### § 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

DELEGATION OF AUTHORITY

### § 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

## Subparts N–O [Reserved]

## Subpart P—Post-9/11 GI Bill

AUTHORITY: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

SOURCE: 74 FR 14671, Mar. 31, 2009, unless otherwise noted.

### § 21.9500 Introduction.

An educational assistance program is established for individuals who served on active duty after September 10, 2001. This educational assistance program is effective August 1, 2009.

(Authority: Pub. L. 110–252, 122 Stat. 2357, 2378)

DEFINITIONS

### § 21.9505 Definitions.

For the purposes of this subpart (governing the administration and payment

of educational assistance under 38 U.S.C. chapter 33) the following definitions apply. (See also additional definitions in §§ 21.1029 and 21.4200).

*Academic year* means the period of time beginning August 1st of each calendar year and ending July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

*Active duty* means full-time duty in the regular components of the Armed Forces or under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304. Active duty does not include—

(1) Full-time National Guard Duty performed under 32 U.S.C. orders;

(2) Any period during which the individual—

(i) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians;

(ii) Served as a cadet or midshipmen at one of the service academies; or

(iii) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(3) A period of service—

(i) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b);

(ii) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348;

(iii) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(iv) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109; or

(4) A period of Selected Reserve service used to establish eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b) and (c))

*Advance payment* means an amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

*Course* means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3323(c))

*Distance learning* means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(7).

(Authority: 20 U.S.C. 1003(7); 38 U.S.C. 3323(c))

*Educational assistance* means the monetary benefit payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3313)

*Enrollment period* means a term, quarter, or semester during which the institution of higher learning offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

*Entry level and skill training* means—

(1) Basic Combat Training and Advanced Individual Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training (''A'' School) for members of the Navy;

(3) Basic Military Training and Technical Training for members of the Air Force;

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

*Established charges* means the actual charge for tuition and fees that similarly circumstanced nonveterans enrolled in the program of education are required to pay.

(Authority: 38 U.S.C. 3313(h))

*Fees* means any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.

(Authority: 38 U.S.C. 501(a), 3323(c))

*Institution of higher learning* (IHL) means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

*Interval* means a period of time between regularly scheduled individual terms, semesters, or quarters.

(Authority: 38 U.S.C. 3034(a)(1), 3323(a), 3680)

*Lump sum payment* means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

*Mitigating circumstances* means circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those that VA considers to be mitigating. This list is not all-inclusive.

(1) An illness or mental illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable change in the individual's conditions of employment;

(4) An unavoidable geographical transfer resulting from the individual's employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the educational institution;

(7) Unanticipated active duty for training; or

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

*Program of education* means a curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. The curriculum or combination of courses pursued must be listed in the institution of higher learning's catalog and included in the approval notice provided by the

State approving agency to VA in accordance with § 21.4258(b)(iv).

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

*Pursuit* means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of Title 38, U.S.C., and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

*Rate of pursuit* means the measurement obtained by dividing the number of credit hours (or the equivalent credit hours as determined in § 21.9750) an individual is enrolled in, including credit hours (or the equivalent) applied to refresher, remedial, and deficiency courses, by the number of credit hours (or the equivalent credit hours) considered to be full-time training at the institution of higher learning. The resulting percentage (rounded to the nearest hundredth) will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(Authority: 38 U.S.C. 3323, 3680)

*Transferor* means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

CLAIMS AND APPLICATIONS

### § 21.9510 Claims, VA's duty to assist, and time limits.

The provisions of subpart B of this part apply to claims filed for educational assistance under 38 U.S.C. chapter 33 with respect to VA's responsibilities upon receipt of claim, VA's duty to assist claimants in obtaining evidence, and time limits.

(Authority: 38 U.S.C. 3323(c), 5101, 5102, 5103, 5103A)

ELIGIBILITY

### § 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33 based on active duty service after September 10, 2001, if he or she—

(a) Serves a minimum of 90 aggregate days excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, see § 21.9640(a)) and, after completion of such service,—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is released from service characterized as honorable and placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5) Is discharged or released from service for—

(i) A medical condition that preexisted such service and is not determined to be service-connected;

(ii) Hardship, as determined by the Secretary of the military department concerned; or

(iii) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves a minimum of 30 continuous days and, after completion of such service, is discharged under other than dishonorable conditions due to a service-connected disability; or

(c)(1) After meeting the minimum service requirements in paragraph (a) or (b) of this section—

(i) An individual makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under either 38 U.S.C. chapter 30, or 10 U.S.C. chapter 106a, 1606, or 1607;

(ii) A member of the Armed Forces who is eligible for educational assistance under 38 U.S.C. chapter 30 and who is making contributions towards such educational assistance under 38

U.S.C. 3011(b) or 3012(c) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33; or

(iii) A member of the Armed Forces who made an election not to receive educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(c)(1) or 3012(d)(1) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33.

(2) An individual may make an irrevocable election to receive benefits under this chapter by properly completing VA Form 22–1990, submitting a transfer-of-entitlement designation under this chapter to the Department of Defense, or submitting a written statement that includes the following—

(i) Identification information (including name, social security number, and address);

(ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable chapters listed in paragraph (c)(1)(i) of this section (e.g., ''I elect to receive benefits under the Post-9/11–GI Bill in lieu of benefits under the Montgomery GI Bill—Active Duty (chapter 30) program.'');

(iii) The date the individual wants the election to be effective (e.g., ''I want this election to take effect on August 1, 2009.''). An election request for an effective date prior to August 1, 2009, will automatically be effective August 1, 2009; and

(iv) An acknowledgement that the election is irrevocable (e.g., ''I understand that my election is irrevocable and may not be changed.'').

(Authority: 38 U.S.C. 3311; Pub. L. 110–252, Stat. 2375–2376)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0154)

### §21.9525 Eligibility for increased and supplemental educational assistance.

(a) *Increased assistance for members with critical skills or specialty*. The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable under §21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel.

(b) *Supplemental assistance for members serving additional service*. The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may supplement the amount of educational assistance payable under §21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who meets the following service requirements.

(1) *Individuals with active duty service only*. Supplemental educational assistance may be offered to an individual who serves 5 or more consecutive years on active duty in the Armed Forces in addition to the years counted to qualify for educational assistance, without a break in such service, and—

(i) Continues on active duty without a break;

(ii) Is discharged from service with an honorable discharge;

(iii) Is placed on the retired list;

(iv) Is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(v) Is placed on the temporary disability retired list; or

(vi) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(2) *Individuals with Selected Reserve service*. (i) Supplemental educational assistance may be offered to an individual who—

(A) Serves 2 or more consecutive years on active duty in the Armed Forces in addition to the years on active duty counted to qualify for educational assistance;

(B) Serves 4 or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for educational assistance; and

(C) After completion of such service—

(*1*) Is discharged from service with an honorable discharge;

(*2*) Is placed on the retired list;

(*3*) Is transferred to the Fleet Reserve or Fleet Marine Corps Reserve;

(*4*) Is placed on the temporary disability retired list;

(*5*) Continues on active duty; or

(*6*) Continues in the Selected Reserve.

(ii) The Secretary concerned may, pursuant to regulations prescribed by the Secretary of Defense, determine the maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though the individual—

(A) Is unable to locate a unit of the Selected Reserve for which he or she is eligible;

(B) Is unable to locate a unit of the Selected Reserve that has a vacancy; or

(C) For any other reason other than those stated in paragraph (b)(2)(ii)(A) and (B) of this section.

(iii) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Secretary of Defense will be binding upon VA.

(Authority: 38 U.S.C. 3021, 3022, 3023, 3316)

**§ 21.9530 Eligibility time limit.**

(a) Except as provided in paragraphs (b) through (e) of this section, an individual's period of eligibility for educational assistance will terminate effective 15 years from the date of the last discharge or release from active duty of at least—

(1) 90 continuous days; or

(2) 30 continuous days if the individual is released for a service-connected disability.

(b) In the case of an individual who establishes eligibility and does not meet one of the service requirements specified in paragraph (a) of this section, the individual's period of eligibility for educational assistance will terminate effective 15 years from the date of discharge for the last period of service used to meet the minimum service requirements for eligibility as stated in § 21.9520.

(c) *Amendment of military records.* If an individual's eligibility for educational assistance is established as a result of a correction of military records under 10 U.S.C. 1552, a change, correction, or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the change, correction, modification, or other corrective action.

(Authority: 38 U.S.C. 3311(c), 3321)

(d) *Time limit for spouse using transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the spouse's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The transferor's ending date as determined under this section;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(2) If the transferor dies while on active duty, the ending date of the spouse's period of eligibility is the earliest of the following—

(i) The date 15 years from the transferor's date of death;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(Authority: 38 U.S.C. 3319)

(e) *Time limit for child using transferred entitlement.* (1) The ending date of the child's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective;

(ii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f); or

(iii) The day the child turns 26.

(2) [Reserved]

(Authority: 38 U.S.C. 3319)

**§21.9535 Extended period of eligibility.**

VA will extend an individual's period of eligibility in accordance with the following provisions.

(a) *Disability extension.* (1) VA will grant an extension of the period of eligibility, as determined in §21.9530 (except for paragraphs (d) and (e)) provided—

(i) The individual applies for the extension within the time specified in §21.1033(c); and

(ii) The medical evidence clearly establishes that the individual was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. VA will not consider an individual's disability for a period of 30 days or less as having prevented the individual from initiating or completing a chosen program, unless the evidence establishes that the individual was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance due to the short-term disability.

(2) *Length of extension.* An individual's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This will be determined as follows—

(i) If the individual is pursuing a program of education organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The beginning date of the ordinary term, quarter, or semester following the day the individual's training became medically feasible;

(B) The last date of the individual's original period of eligibility as determined in §21.9530; or

(C) The date the individual resumed training.

(ii) If the individual is pursuing a program of education that is not organized on a term, quarter, or semester basis, his or her extended period of eligibility will contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The date the individual's training became medically feasible; or

(B) The last date of the individual's original period of eligibility as determined in §21.9530.

(b) *Forcibly detained extension.* (1) VA will grant an extension of the period of eligibility, as determined in §21.9530, equal to the period of time the individual—

(i) Was captured and forcibly detained by a foreign government or power, and

(ii) Was hospitalized at a military, civilian, or medical facility immediately following release from the foreign government or power.

(2) [Reserved]

(Authority: 38 U.S.C. 3321)

ENTITLEMENT

**§21.9550 Entitlement.**

(a) Subject to the provisions of §21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual, who as of August 1, 2009, was eligible under 38 U.S.C. chapter 30, had not used any entitlement

under that program, was making contributions towards chapter 30, or was a servicemember who would have been eligible for chapter 30 if he or she had not declined participation, will receive 36 months of entitlement under chapter 33.

(c) Except as provided in §§ 21.9560(d), 21.9570(m), and 21.9635(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

### § 21.9555 Entitlement to supplemental educational assistance.

In determining the entitlement of an individual who is eligible for supplemental educational assistance, VA will—

(a) Calculate the individual's entitlement to 38 U.S.C. chapter 33 educational assistance on the day he or she establishes eligibility for supplemental educational assistance; and

(b) Credit the individual with the same number of months and days of entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023, 3316)

### § 21.9560 Entitlement charges.

(a) *Overview*. Except as provided in paragraphs (c) through (f) of this section, VA will base entitlement charges on the principle that an eligible individual who is paid educational assistance for one day of full-time pursuit should be charged one day of entitlement.

(b) *Determining entitlement charge*. (1) VA will make a charge against entitlement as follows:

(i) *Full-time pursuit*. If the individual is pursuing a program of education on a full-time basis, the entitlement charge will be one of the following—

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the entitlement charge will be one day for each day of the certified enrollment period;

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the entitlement charge will be one day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance; or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

(ii) *Less than full-time pursuit*. If the individual is pursuing a program of education on a less than a full-time basis, the entitlement charge will be one of the following—

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day for each day of the certified enrollment period determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth);

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the individual will be charged a percentage of a day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth); or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1

day for every $41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by $41.67.

(Authority: 38 U.S.C. 3313)

(2) If the individual changes his or her rate of pursuit after the beginning date of the award, VA will—

(i) Divide the certified enrollment period into separate periods of time so that the individual's rate of pursuit is constant within each period; and

(ii) Compute the rate of pursuit separately for each time period.

(c) *Individuals eligible for, or in receipt of, educational assistance other than that authorized under chapter 33.* If an individual elected 38 U.S.C. chapter 33 by relinquishing educational assistance under another program but receives educational assistance for a program of education that is approved under the relinquished chapter but not approved under 38 U.S.C. chapter 33, VA will make a charge against entitlement equivalent to the entitlement charge—

(1) That would be made under the provisions of §21.7076, if the individual relinquished eligibility under 38 U.S.C. chapter 30;

(2) That would be made under the provisions of §21.7576 if the individual relinquished eligibility under 10 U.S.C. chapter 1606; or

(3) That would be made under 10 U.S.C. chapter 1607 if the individual relinquished eligibility under 10 U.S.C. chapter 1607.

(d) *No entitlement charge.* VA will not make a charge against an individual's entitlement—

(1) For an approved licensing or certification test as provided under §21.9665; or

(Authority: 38 U.S.C. 3315)

(2) For tutorial assistance as provided under §21.9685; or

(Authority: 38 U.S.C. 3314)

(3) For the rural relocation benefit as provided under §21.9660; or

(Authority: 38 U.S.C. 3318)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(e) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for any part of the certified period of enrollment;

(3) The individual interrupts his or her enrollment at the end of any term, quarter, or semester within a certified period of enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for the succeeding term, quarter, or semester; or

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual negotiated a check or

received a direct deposit for educational assistance provided under this chapter for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(f) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balances as determined in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, course costs and marshal fees);

(iii) Dividing the result obtained in paragraph (f)(3)(ii) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (f)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

TRANSFER OF ENTITLEMENT TO BASIC EDUCATIONAL ASSISTANCE TO DEPENDENTS

### § 21.9570 Transfer of entitlement.

An individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own active duty service, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9505—Definitions.

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.*

(i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.*

(i) Section 21.9550—Entitlement;

(ii) Section 21.9555—Entitlement to supplemental educational assistance;

(iii) Section 21.9560—Entitlement charges.

(Authority: 38 U.S.C. 3319)

(5) *Counseling*.
(i) Section 21.9580—Counseling;
(ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses*.
(i) Section 21.9590—Approved programs of education and courses;
(ii) Section 21.9600—Overcharges.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance*.
(i) Section 21.9620—Educational assistance;
(ii) Section 21.9625—Beginning dates, except for paragraphs (e) and (h);
(iii) Section 21.9630—Suspension or discontinuance of payments;
(iv) Section 21.9635—Discontinuance dates, except for paragraphs (n) and (o);
(v) Section 21.9640—Rates of payment of educational assistance;
(vi) Section 21.9650—Increase in educational assistance;
(vii) Section 21.9655—Rates of supplemental educational assistance;
(viii) Section 21.9660—Rural relocation benefit;
(ix) Section 21.9665—Reimbursement for licensing or certification tests;
(x) Section 21.9670—Work-study allowance;
(xi) Section 21.9675—Conditions that result in reduced rates or no payment;
(xii) Section 21.9680—Certifications and release of payments;
(xiii) Section 21.9685—Tutorial assistance;
(xiv) Section 21.9690—Nonduplication of educational assistance;
(xv) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and

(Authority: 38 U.S.C. 3319)

(xvi) Section 21.9700—Yellow Ribbon Program.

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses*.
(i) Section 21.9710—Pursuit;
(ii) Section 21.9715—Advance payment certification;
(iii) Section 21.9720—Certification of enrollment;
(iv) Section 21.9725—Progress and conduct;
(v) Section 21.9735—Other required reports;
(vi) Section 21.9740—False, late, or missing reports; and
(vii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment*. Section 21.9750—Course measurement.

(Authority: 38 U.S.C. 3319)

(10) *Administrative*. Section 21.9770—Administrative.

(Authority: 38 U.S.C. 3319)

(b) *Eligible dependents*. (1) An individual transferring entitlement under this section may transfer entitlement to:
(i) The individual's spouse;
(ii) One or more of the individual's children; or
(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.
(2) A spouse must meet the definition of spouse in §3.50(a) of this chapter at the time of transfer.
(3) A child must meet the definition of child in §3.57 of this chapter at the time of transfer. The transferor must make the required designation shown in §21.9570(d)(1) before the child attains the age of 23.
(4) A stepchild, who meets VA's definition of child in §3.57 of this chapter at the time of transfer and who is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement*. An individual approved by his or her military department to transfer entitlement may do so at any time while serving as

a member of the Armed Forces, subject to the transferor's 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer*. (1) An individual transferring entitlement under this section must:

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3319)

(e) *Maximum months of entitlement transferable*. (1) The maximum amount of entitlement a transferor may transfer is the lesser of:

(i) Thirty-six months of his or her entitlement; or

(ii) The maximum amount authorized by the Secretary of the military department concerned; or

(iii) The amount of entitlement he or she has available at the time of transfer.

(2) The transferor may transfer up to the maximum amount of transferable entitlement:

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement*. (1) A transferor may revoke any unused portion of transferred entitlement at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

(i) The date VA receives the notice of revocation; or

(ii) The date the military department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement*. (1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time. Any modification made will apply only with respect to unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the military department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property*. Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor*. VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate)*. Children who have reached age 18 and spouses may use transferred entitlement to pursue and

complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in §21.9640 (and §§21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in §21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Disregard the fact that either the transferor or the dependent child is (or both are) on active duty, and pay the veteran rate to a dependent child;

(2) Pay the veteran rate to a surviving spouse; and

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under §21.9640 if the dependent's months of entitlement will exhaust during the certified enrollment period, by—

(i) Determining the amount of established charges the dependent would otherwise be eligible to receive for the entire enrollment period, then dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of established charges to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under §21.9570; and

(ii) Discontinuing the dependent's monthly housing allowance effective as of the date the dependent's months and days of entitlement exhausts.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.* (1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless—

(i) The transferor did not complete the service due to:

(A) His or her death;

(B) A medical condition that preexisted such service on active duty and that the Secretary of the military department concerned determines is not service-connected;

(C) A hardship, as determined by the Secretary of the military concerned; or

(D) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of duty, as determined by the Secretary of the military department concerned; or

(ii) The transferor is considered to have completed his or her service agreement as a result of being discharged for—

(A) A disability; or

(B) A reduction in force.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) of this section or the transferor was not discharged for one of the reasons stated in paragraph (l)(1)(ii) of this section.

(Authority: 38 U.S.C. 3034(a), 3311(c)(4), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service:

(1) May receive educational assistance payable under this section and educational assistance payable based

on their own active duty service for the same course; and

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33 as long as the only educational assistance paid is under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

COUNSELING

### § 21.9580 Counseling.

An individual may receive counseling from VA before beginning training and during training. VA will apply the provisions of § 21.7100 to beneficiaries under 38 U.S.C. chapter 33 in the same manner as they are applied to individuals under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3697A)

### § 21.9585 Travel expenses.

VA will not pay for any costs of travel to and from the place of counseling regardless of whether the individual requests educational and vocational counseling or whether the counseling is required.

(Authority: 38 U.S.C. 111, 3323(c))

APPROVED PROGRAMS OF EDUCATION AND COURSES

### § 21.9590 Approved programs of education and courses.

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in § 21.7020(b);

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of established charges not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9505;

(2) Except for a program consisting of a licensing or certification test, the program has an educational, vocational, or professional objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

(d) *Programs not authorized under 38 U.S.C. chapter 33.* If an individual elected to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under 38 U.S.C. chapter 30, or 10 U.S.C. chapter 1606 or 1607, and the eligible individual requests educational assistance for a program of education that is not authorized to be available to the individual under the provisions of 38 U.S.C. chapter 33, but is available

under the chapter the individual relinquished, VA will provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter;

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

(Authority: Pub. L. 110–252, 122 Stat. 2377)

**§21.9600 Overcharges.**

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges an individual, or receives from an individual, an amount for tuition and fees that exceeds the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the established fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

PAYMENTS—EDUCATIONAL ASSISTANCE

**§21.9620 Educational assistance.**

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in §21.9640. The maximum amounts of tuition and fees payable for the upcoming academic year under 38 U.S.C. chapter 33 will be published in the ''Notices'' section of the FEDERAL REGISTER by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at *http://www.gibill.va.gov* or by calling VA's customer service department toll-free at 1–888–442–4551. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

**§21.9625 Beginning dates.**

VA will determine the beginning date of an award or increased award of educational assistance under this section, but in no case will the beginning date be earlier than August 1, 2009. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test.* (i) If the award is an award for the first period of enrollment for which the eligible individual began pursuing his or her program of education, the beginning date will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by §21.1029(b);

(C) The effective date of the approval of the program of education; or

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is an award for a second or subsequent period of enrollment

for which the eligible individual is pursuing a program of education, the effective date of the award will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the institution of higher learning.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education that does not lead to a standard college degree.* (1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section.

(Authority: 38 U.S.C. 3313(b), 3323)

(2) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance (as defined in § 21.7020(b)(36)).

(Authority: 38 U.S.C. 3313, 3316, 3323)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts

found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in §21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C.3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving, or is receiving a reduced rate, of educational assistance under §21.9675 (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

(1) The date the tuition and fees are no longer being paid under a Federal (other than one administered by VA), State, or local program; or

(2) The date the individual is released from the penal institution or correctional facility.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase (''kicker'') based on critical skills or specialty.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance under 38 U.S.C. 3316, the effective date of that increase ('kicker'') will be the later of—

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first date on which the eligible individual is entitled to the increase (''kicker'') as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under §21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in §3.50(a) of this chapter.

(Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under §21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in §3.57 of this chapter; or

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3319)

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified period of enrollment, VA will begin paying—

(1) Tuition and fees using the provisions of § 21.9640(b) or (c), whichever is applicable, effective the first day of the enrollment period following the enrollment period during which the individual was discharged;

(2) The monthly housing allowance beginning the 1st day of the month following the date the individual was discharged; and

(3) The book stipend beginning the first day of the enrollment period following the enrollment period during which the individual was discharged.

(l) *Election to receive benefits under 38 U.S.C. chapter 33.* If an individual makes an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under 10 U.S.C. chapter 106a, 1606, or 1607, or 38 U.S.C. chapter 30 in accordance with 38 CFR 21.9520(c), VA will begin paying benefits under 38 U.S.C. chapter 33 effective the later of the following—

(1) August 1, 2009;

(2) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;

(3) One year before the date the valid election request was received; or

(4) The effective date of the election as requested by the claimant.

### § 21.9630 Suspension or discontinuance of payments.

VA may suspend or discontinue payment of educational assistance in accordance with §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

### § 21.9635 Discontinuance dates.

The effective date of a reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment under § 21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the institution of higher learning receives a lump sum payment for established charges on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9680(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider mitigating circumstances to exist with respect to the withdrawal of a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider a course

or courses dropped during an institution of higher learning's drop-add period in accordance with §21.4200(l). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* (1) If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training effective the last date of attendance; and

(ii) Independent study or distance learning effective on the official date of change in status under the practices of the institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when the circumstances in either paragraphs (d)(1)(i) or (d)(1)(ii) apply—

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the requirements of §21.9680(b)(5) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw

from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(3) If an eligible individual receives an incomplete grade for a course or courses, VA will delay creating an overpayment for such course or courses to allow the individual an opportunity to complete the course or courses. However, if the incomplete grade is not replaced with a punitive grade, VA will reduce the individual's educational assistance in accordance with paragraph (f)(1) or (2) of this section effective the earliest of—

(i) The last date permitted by the IHL to complete the course;

(ii) The date the IHL permanently assigns a nonpunitive grade;

(iii) One year from the date the incomplete grade was assigned.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under § 21.9630 or § 21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210 if disapproval was preceded by such a suspension; or

(2) The end of the month in which the disapproval is effective or VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments, as provided in § 21.4210, if such suspension preceded the disapproval; or

(2) The end of the month in which the disapproval occurred, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(a), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the institution of higher learning discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the institution of higher learning's regularly established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid

as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of §21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an institution of higher learning, or an officer or employee of a State approving agency and an institution of higher learning, as provided in §21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.* (1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under §21.9675(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following—

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal (other than one administered by VA), State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility; or

(iii) The beginning date of the award as determined by §21.9625.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Reduction or termination due to active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

(i) For established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the ''book stipend'', the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted.

(Authority: 38 U.S.C. 3313(e))

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an institution of higher learning on the date of

expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an institution of higher learning in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase (''kicker'') for Selected Reserve service.* If an eligible individual is entitled to an increase (''kicker'') in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase (''kicker'').

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under this

chapter who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980, may choose to receive educational assistance under another program. VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3322(a))

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9570.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9570.

(Authority: 38 U.S.C. 3319)

(bb) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (aa) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

### § 21.9640 Rates of payment of educational assistance.

VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* Except as provided in paragraph (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

| Aggregate length of creditable active duty service after 09/10/01 | Percentage of maximum amounts payable |
|---|---|
| At least 36 months [1] | 100 |
| At least 30 continuous days (Must be discharged due to service-connected disability) | 100 |
| At least 30 months, but less than 36 months [1] | 90 |
| At least 24 months, but less than 30 months [1] | 80 [3] |
| At least 18 months, but less than 24 months [2] | 70 [3] |
| At least 12 months, but less than 18 months [2] | 60 |
| At least 6 months, but less than 12 months [2] | 50 |
| At least 90 days, but less than 6 months [2] | 40 |

[1] Includes entry level and skill training.
[2] Excludes entry level and skill training.

[3] If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

(Authority: 38 U.S.C. 3311, 3313)

(b) *Maximum amounts payable for training at more than one-half time.* An individual, other than one on active duty, who is pursuing a program of education at more than one-half time (at a rate of pursuit greater than 50 percent) and who—

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(1)(i)(A) and the lower amount of fees as determined in paragraph (b)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning; or

(*2*) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning; or

(*2*) The maximum amount of fees regularly charged full-time undergraduate in-State students in a term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees in a term, quarter, or semester in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (b)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§ 21.4020 and 21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 using the ZIP code area in which all, or a majority, of the primary institution of higher learning in which the individual is enrolled is located or, if the individual is only pursuing distance learning courses at the primary institution of higher learning, the ZIP code area in which all, or a majority of the institution of higher learning in which the individual is enrolled in one or more resident courses is located; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(2) Is enrolled at an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(2)(i)(A) and the lower amount of fees as determined in paragraph (b)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph ((b)(2)(i)(A) and in paragraph (b)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, unweighted arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, unweighted arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (b)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§21.4020 and 21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the average (*i.e.*, unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E–5 residing in the United States; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(c) *Maximum amounts payable for training at one-half time or less.* An individual, other than one on active duty, who is pursuing a program of education at one-half time or less (at a rate of pursuit of 50 percent or less) and who—

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(1)(i)(A) and the lower amount of fees as determined in paragraph (c)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(*2*) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(*2*) The maximum amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees per term, quarter or semester, in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (c)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§ 21.4020 and 21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term; multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(2) Is enrolled in an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(2)(i)(A) and the lower amount of fees as determined in paragraph (c)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph (c)(2)(i)(A) and in paragraph (c)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of

July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of—

(*1*) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of—

(*1*) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(*2*) The average (*i.e.*, arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (c)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§21.4020 and 21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the ''book stipend'') payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) $41.67 ($1,000 divided by 24); multiplied by

(B) The number of credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year; multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(d) *Amounts payable for individuals on active duty.* Individuals on active duty who are pursuing a program of education may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(1) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;

(2) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment.

(3) The lesser amount of paragraph (d)(1) or (2) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §§21.4020 and 21.9635(o);

(e) *Publication of educational assistance rates.* VA will publish the maximum amounts of tuition and fees payable for the upcoming academic year in the ''Notices'' section of the FEDERAL REGISTER and on the GI Bill Web site at *http://www.gibill.va.gov* by the first of August of each calendar year. The maximum amounts payable, as published, will be effective for each term,

quarter, or semester that begins during the academic year.

(Authority: 38 U.S.C. 3313, 3323(c))

### § 21.9645 Refund of basic contribution to chapter 30.

(a)(1) An individual who makes an irrevocable election to receive educational assistance under this chapter by relinquishing eligibility under chapter 30 will be entitled to receive a refund of the amount contributions paid under 38 U.S.C. 3011(b) or 3012(c), up to $1,200, if the individual, as of the date of the individual's election, meets the requirements for entitlement to educational assistance under this chapter and meets one of the following requirements as of August 1, 2009—

(i) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 and has remaining entitlement under that chapter;

(ii) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 but has not used any entitlement under that chapter; or

(iii) He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because he or she has met the requirements of § 21.7042(a) or (b) and is making contributions as provided in § 21.7042(g).

(2) Individuals are not entitled to a refund of any portion of additional contributions, of up to $600, paid towards educational assistance under 38 U.S.C. chapter 30 in accordance with the provisions of § 21.7136(h).

(b) *Amount of refund.* The amount of any payment made under this section to the individual who made the contributions will be equal to the total amount of contributions toward basic educational assistance made by the individual as provided in § 21.7042(g) multiplied by the fraction with—

(1) A numerator equal to—

(i) The number of months of entitlement under 38 U.S.C. chapter 30 remaining to the individual at the time of the election and the number of months, if any, of transferred entitlement under 38 U.S.C. chapter 30 that the individual revoked; or

(ii) 36 for individuals making contributions in accordance with § 21.9645(a)(iii); and

(2) A denominator equal to 36.

(c) *Timing of Payment.* The amount payable under this section will only be paid to the individual who made the contributions as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

(Authority: Pub. L. 110–252, Stat. 2377–2378)

### § 21.9650 Increase in educational assistance.

The Secretary of the military department concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty retaining personnel, as determined by the Secretary of the military department concerned.

(a) *Chapter 33 increase (''kicker'') amount.* (1) The amount of the increase is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (a)(i) of this section based on the individual's rate of pursuit of training.

(2) The increase (''kicker'') amount payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3015(d)(1), 3313(c), 3316(a))

(b) *Chapter 30 increase (''kicker'') amount.* (1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 38 U.S.C. chapter 30 in accordance with the provisions of § 21.9520(c) and, on the date of such election, the individual is also entitled to an increase (''kicker'') of the amount of educational assistance under 38 U.S.C. 3015(d), the individual remains entitled

to that increase under 38 U.S.C. chapter 33.

(2) The increase (''kicker'') amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (b)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase (''kicker'') amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3015(d); Pub. L. 110–252, Stat. 2378)

(c) *Chapter 1606 increase (''kicker'') amount.* (1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 10 U.S.C. chapter 1606 in accordance with the provisions of §21.9520(c) and, on the date of such election, the individual is also entitled to an increase (''kicker'') of the amount of educational assistance under 10 U.S.C. 16131(i), the individual remains entitled to that increase (''kicker'') under 38 U.S.C. chapter 33.

(2) The increase (''kicker'') amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) $350.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (c)(2)(i) of this section based on the individual's rate of pursuit of training.

(3) The increase (''kicker'') amount payable under paragraph (c) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 10 U.S.C. 16131(i); Pub. L. 110–252, Stat 2378)

[74 FR 14671, Mar. 31, 2009; 74 FR 17907, Apr. 20, 2009]

### §21.9655 Rates of supplemental educational assistance.

In addition to basic educational assistance, an individual who is eligible for supplemental educational assistance and entitled to it will be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by §21.9675.

(a) *Individuals eligible for supplemental educational assistance under chapter 33.* (1) The monthly amount of supplemental educational assistance payable to an individual whose initial eligibility for educational assistance is acquired under 38 U.S.C. chapter 33 is set by the Secretary of the military department concerned, but may not exceed $300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(2) The increase payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under §21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316)

(b) *Individuals who were eligible for supplemental educational assistance under 38 U.S.C. chapter 30.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under §21.9520(c) and was entitled to supplemental educational assistance under subchapter III of 38 U.S.C. chapter 30 remains entitled to such additional amount under chapter 33.

(2) The amount of the increase is set by the Secretary of the military department concerned, but may not exceed $300 per month for full-time training. Individuals pursuing training at

less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(3) The supplemental increase amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3021; Pub. L. 110–252, 122 Stat. 2378)

### § 21.9660 Rural relocation benefit.

An individual eligible for educational assistance under this chapter is entitled to receive a one-time payment of $500 if the individual—

(a) Resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census); and

(b) Either—

(1) Physically relocates at least 500 miles in order to pursue a program of education for which the individual receives educational assistance under this chapter; or

(2) Travels by air to physically attend an institution of higher learning for pursuit of an approved program of education under this chapter if no other land-based method of transportation is available due to an absence of roads or other infrastructure; and

(3) Has provided documentation required in § 21.9680(c).

(Authority: 38 U.S.C. 3318)

### § 21.9665 Reimbursement for licensing or certification tests.

An eligible individual is entitled to receive reimbursement for taking one licensing or certification test. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test taken on or after August 1, 2009, is the lesser of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test; or

(b) $2,000.

(Authority: 38 U.S.C. 3315)

### § 21.9670 Work-study allowance.

An eligible individual pursuing a program of education under 38 U.S.C. chapter 33 at a rate of pursuit of at least 75 percent may receive a work-study allowance in accordance with the provisions of § 21.4145.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3485)

### § 21.9675 Conditions that result in reduced rates or no payment.

The payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be

extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No educational assistance for some incarcerated individuals.* VA will not pay educational assistance to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction and has incurred no expenses for books, supplies, or equipment if—

(1) The individual is enrolled in a course for which there is no tuition and fees;

(2) The individual is enrolled in a course and the tuition and fees for the course are being paid in full by a Federal (other than one administered by VA), State, or local program.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) VA will reduce the amount of educational assistance paid to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction if—

(i) The individual is enrolled in a course for which the tuition and fees are paid entirely by a Federal (other than one administered by VA), State, or local program, but the individual is required to purchase books, supplies, or equipment for the course; or

(ii) The individual is enrolled in a course for which the tuition and fees are paid partially by a Federal (other than one administered by VA), State, or local program, whether or not the individual is required to purchase books, supplies, or equipment for the course.

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be the lesser of the following—

(i) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment; or

(ii) The amount of tuition and fees otherwise payable to the individual based on the individual's length of creditable service as determined in § 21.9640(a) and the individual's rate of pursuit, plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (See § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

### § 21.9680 Certifications and release of payments.

(a) *Payee.* (1) VA will make payment of the appropriate amount of established charges (including top-up payments), as determined under § 21.9640, directly to the institution of higher learning as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.* (1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance top-up, one seeking reimbursement for taking an approved licensing or certification test, or one who qualifies for an advance payment of the monthly housing allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9720.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0073)

(2) *Advance payments.* VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The institution of higher learning at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's institution of higher learning;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment either—

(*1*) Is preceded by an interval of nonpayment of 30 days or more; or

(*2*) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(G) The institution of higher learning or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the institution of higher learning for delivery to the eligible individual. The institution of higher learning will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an institution of higher learning if:

(A) The institution of higher learning demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The institution of higher learning fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the institution of higher learning has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) *Lump sum payments.* VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To an institution of higher learning, on behalf of an eligible individual, for the appropriate amount of established charges;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the $500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) VA will pay educational assistance for tuition assistance top-up only

after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the eligible individual wants tuition assistance top-up. If the form(s) submitted do not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization, or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG–4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0698)

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0695)

(6) *Payment for intervals and temporary school closings.* VA may authorize payment of the monthly housing allowance (as increased under §§ 21.9650(a) and 21.9655(a), if applicable) for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (b)(5)(i) through (b)(5)(v) of this section concerning intervals and in paragraph (5)(vi) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(i) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (b)(5)(ii) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (b)(5)(iii), (iv), and (v) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(ii) *Restrictions on payment for intervals.* VA will make no payment for an interval if—

(A) The individual's rate of pursuit is one-half time or less on the last day of the certified enrollment period preceding the interval;

(B) The individual is on active duty;

(C) The individual requests, prior to authorization of an award or prior to negotiating a check or receiving a direct deposit for educational assistance, that no benefits be paid for the interval period;

(D) The individual's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the individual not to receive payment;

(E) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis; or

(F) The individual withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in an institution of higher learning not organized on a term, quarter, or semester basis.

(iii) *Payment for intervals between periods of enrollment at different schools.* If the individual transfers from one approved school for the purpose of enrolling in and pursuing a similar program of education at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar program of education at the second school, VA may not make payments for the interval.

(iv) *Payment for intervals that occur at the same school.* (A) If the individual remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(*1*) Semesters or quarters,

(*2*) A semester or quarter and a term that is at least as long as the interval,

(*3*) A semester or quarter and a summer term that is at least as long as the interval,

(*4*) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(*5*) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(B) If the individual remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(v) *Payment for intervals that occur between overlapping enrollments.* (A) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and which dates the interval and enrollment periods will be considered to begin and end, as follows:

(*1*) By treating the ending date of each enrollment period as though it were the individual's last date of training before the interval,

(*2*) By treating the beginning date of each enrollment period as though it were the individual's first date of training after the interval,

(*3*) By examining the interval payment that would be made to the individual on the basis of the various combinations of beginning and ending dates, and

(*4*) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(B) VA will not reduce the interval rate of payment as a result of training the individual may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(vi) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraph (b)(5)(ii) through (v) of this section to determine if payment may be continued during the interval.

(A) If payment would not be inconsistent with the provisions of paragraph (b)(5)(ii) through (v) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if it appears that either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(*1*) The Director of the VA Regional Processing Office of jurisdiction if:

(*i*) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(*ii*) If the reason for the closing is a strike, and the strike lasts, or is anticipated to last, 30 days or less.

(*2*) The Director of Education Service if:

(*i*) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(*ii*) The reason for the closing is a strike, and the strike lasts, or is anticipated to last, more than 30 days.

(B) A school that disagrees with a decision made under paragraph (b)(5)(vi) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

(*1*) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments; or

(*2*) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3034(a), 3323(a), 3680(a))

(c) *Rural relocation benefit*. VA will make the $500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in §21.9680;

(2) The individual has provided—

(i) *Request for benefit*. An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence*. (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

(*1*) DD Form 214, Certification of Release or Discharge from Active Duty; or

(*2*) The most recent Federal income tax return; or

(*3*) The most recent State income tax return; or

(*4*) Rental/lease agreement; or

(*5*) Mortgage document; or

(*6*) Current real property assessment; or

(*7*) Voter registration card.

(B) An individual using entitlement granted under §21.9570 who, because he or she resides with the transferor or, in the case of a child, a parent, cannot provide any of the documents in paragraph (c)(2)(ii) of this section, may submit any document in paragraphs (c)(2)(ii)(A)(*2*) through (*7*) of this section bearing the name and current address of the transferor or, in the case of a child, a parent as proof of residence; and

(iii) *Proof of relocation*. An individual traveling by air must provide an airline receipt for travel with a departure and destination airport within reasonable distance from the home of residence and the institution of higher learning, respectively; and

(3) VA has determined that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation, and either:

(i) If traveling by land, physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2) as the beginning point and the address of the institution of higher learning as the ending point; or

(ii) If traveling by air, was unable to travel to the institution of higher learning by land due to the absence of road or other infrastructure.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

### § 21.9685 Tutorial Assistance.

(a) An individual who is eligible to receive benefits under 38 U.S.C. chapter 33 may receive additional monetary assistance for tutorial services. VA will pay the individual this assistance if the tutorial assistance is necessary for the eligible individual to complete his or her program of education successfully, and the individual—

(1) Is enrolled in and pursuing a post-secondary program of education at a rate of pursuit of at least 50 percent at an institution of higher learning; and

(2) The professor or other person teaching, leading, or giving the course certifies that—

(i) Tutorial assistance is essential to correct a deficiency of the individual in such course; and

(ii) The course is required as part of, or is prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.

(b) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed $100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed $1,200.

(Authority: 38 U.S.C. 3034(a), 3314, 3323(a), 3492)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0171)

### § 21.9690 Nonduplication of educational assistance.

(a) Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(1) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(2) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(3) 10 U.S.C. 106a (Section 901, Educational Assistance Test Program);

(4) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(5) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(6) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(7) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance); or

(8) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96–342)

(b) An individual who is eligible for educational assistance under more than one program listed in paragraph (a) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

### § 21.9695 Overpayments.

(a) *Prevention of overpayments.* In administering educational assistance payable under 38 U.S.C. chapter 33, VA will apply the provisions of §§ 21.4008 and 21.4009 to eligible individuals and,

when appropriate, to institutions of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(b))

(b) *Liability for overpayments.* (1) An overpayment of educational assistance paid to an eligible individual constitutes a liability of that individual unless—

(i) The overpayment was waived as provided in §§1.957 and 1.962 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See §21.9635(r).

(2) An overpayment of educational assistance paid to the institution of higher learning on behalf of an eligible individual constitutes a liability of the individual unless the individual never attended the term, quarter, or semester certified by the institution of higher learning. If the individual never attended the term, quarter, or semester certified by the institution of higher learning, the institution must return to VA all educational assistance received under the provisions of 38 U.S.C. chapter 33 on behalf of the individual for such term, quarter, or semester.

(3) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of the institution of higher learning if VA determines that the overpayment is the result of willful or negligent—

(i) False certification by the institution of higher learning; or

(ii) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3685)

(iii) In determining whether an overpayment resulting from the actions listed in paragraphs (b)(3)(i) and (ii) of this section should be recovered from an institution of higher learning, VA will apply the provisions of §21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

(4) VA will determine the amount of an overpayment as follows—

(i) For an individual who does not complete one or more courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such course or courses, VA will establish an overpayment equal to the amount of educational assistance paid for the course or courses not completed during that certified period of enrollment.

(ii) For an individual who does not complete one or more courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such course or courses, VA will prorate the amount of educational assistance to which he or she is entitled.

(A) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid for the course or courses not completed by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due for the course or courses not completed will be established as an overpayment.

(B) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(C) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (''book stipend'').

(Authority: 38 U.S.C. 3034(a), 3323, 3685, 5302)

**§ 21.9700 Yellow Ribbon Program.**

(a) *Establishment.* The ''Yellow Ribbon G.I. Education Enhancement Program'', known as the ''Yellow Ribbon Program,'' permits an institution of higher learning (IHL), at the IHL's option, to enter into an agreement with VA to allow the two parties to provide matching funds to cover a portion of the outstanding amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100 percent educational assistance rate (based on service requirements) as shown in the chart in § 21.9640(a) or to their designated dependents using entitlement transferred under § 21.9570, who are pursuing training at an eligible IHL.

(c) *Eligible IHLs.* This program is only available at IHLs located in the United States or at a branch of such IHL that is located outside the United States.

(d) *Agreements.* VA will enter into an agreement with an eligible IHL located in the United States seeking to participate in the Yellow Ribbon Program based on a general agreement format developed by VA in which the IHL must agree to—

(1) Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), during the academic year;

(2) Provide contributions during the current academic year and all subsequent academic years in which the IHL participates in the Yellow Ribbon Program and the student maintains satisfactory progress, conduct, and attendance according to the regularly prescribed standards of the institution;

(3) Limit contributions made on behalf of a participant to funds under the unrestricted control of the IHL (e.g., a scholarship sent directly to an IHL on behalf of an individual or specific group of individuals from a third party may not be included in Yellow Ribbon Program contributions). Funds received directly or indirectly from Federal sources may not be counted toward contributions;

(4) State the maximum number of individuals for whom contributions will be made during the academic year;

(5) State the manner (whether by direct grant, scholarship, or otherwise) contributions will be made under the Yellow Ribbon Program;

(6) State the maximum dollar amount of contributions that may be provided on behalf of any particular individual during the academic year regardless of the rate at which the individual is pursuing training. IHLs may specify different contributions amounts—

(i) Based on student status (*i.e.* , undergraduate, graduate, doctoral), or

(ii) For each subelement of the institution (*i.e.*, college or professional school). The maximum amount specified for each subelement of the IHL will apply to all programs and disciplines offered under such subelement.

(7) Provide the maximum amount of contributions payable toward the unmet established charges to all participating individuals during each term, quarter, or semester the individual is enrolled if the IHL's total contribution toward the individual's unmet established charges for the term, quarter, or semester, do not exceed the maximum dollar amount payable during the academic year as specified in paragraph (d)(6) of this section.

(e) *Centralized Agreements.* IHLs with multiple campuses may enter into a single Yellow Ribbon Program Agreement if all participating branches and extensions—

(1) Are listed in the agreement;

(2) Are subject to the authority of the authorizing official signing the Yellow Ribbon Program Agreement; and

(3) Have a certifying official or other employee who meets the requirements of § 21.4266(f)(3)(ii) and who has access to the terms of the Yellow Ribbon Program Agreement.

(f) *Matching Contributions.* VA will match each dollar provided by the school on behalf of an individual; however, the combined amount of contributions under the Yellow Ribbon Program may not exceed the remaining

amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(g) *Outreach*. The most current list of colleges and universities participating in the Yellow Ribbon Program will be available at VA's GI Bill Web site at *http://www.gibill.va.gov*. The list will include specific information on each school's agreement with VA.

(Authority: 38 U.S.C. 3317)

PURSUIT OF COURSES

**§ 21.9710 Pursuit.**

Except for an eligible individual seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, an individual's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 3323(c))

**§ 21.9715 Advance payment certification.**

All certifications required by this section shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary. An advance payment under this chapter is only permissible to an individual whose rate of pursuit is greater than half-time, and who is entitled to the monthly housing allowance as provided in § 21.9640(b)(1)(ii) or (b)(2)(ii).

(a) *Certification needed before an advance payment can be made*. In order for an individual to receive an advance payment of the monthly housing allowance, an application or other document must be signed by the individual or the enrollment certification must be signed by an authorized official of the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

(b) *Advance payments*. All verifications required by this paragraph shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary.

(1) For each eligible individual receiving an advance payment, an institution of higher learning must—

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the institution of higher learning has initially verified the enrollment of the individual, the individual, not the institution of higher learning, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

**§ 21.9720 Certification of enrollment.**

Except as stated in § 21.9680, an institution of higher learning must certify an eligible individual's enrollment before he or she may receive educational assistance.

(a) *Institutions of higher learning must certify most enrollments*. VA does not, as a condition of payment of tuition assistance top-up or advance payment, require institutions of higher learning to certify the enrollments of eligible individuals who either are seeking tuition assistance top-up or, in the cases described in § 21.9715, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify that the eligible individual took the test. In all other cases, the institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification*. (1) Institutions of higher learning that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the institution of higher learning will report each term, quarter, or semester separately.

(2) Institutions of higher learning organized on a year-round basis that do not offer courses on a term, quarter, or

semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the institution of higher learning closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the institution of higher learning has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(Approved by the Office of Management and Budget under control number 2900–0073)

### § 21.9725 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive payments of educational assistance under 38 U.S.C. chapter 33 for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue payments of educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the institution of higher learning he or she is attending.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the institution of higher learning in which he or she is enrolled. If the individual will no longer be retained as a student or will not be readmitted as a student by the institution of higher learning in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the institution of higher learning's action is wrongfully retaliatory in nature.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the institution of higher learning in which he or she is enrolled.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(d) *Reentrance after discontinuance.* (1) An eligible individual may be reentered following discontinuance because of unsatisfactory attendance, conduct, or progress when either:

(i) The individual resumes enrollment at the same institution of higher learning in the same program of education and the institution of higher learning has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that—

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program that the individual now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(2) Reentrance may be for the same program, a revised program, or an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

### § 21.9735 Other required reports.

VA will apply the provisions of § 21.7156 to individuals and institutions of higher learning under 38 U.S.C. chapter 33 as those provisions are applied to veterans and educational institutions under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a))

**§ 21.9740 False, late, or missing reports.**

(a) *Eligible individual.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 to any individual who submits false or misleading claims, statements, or reports in connection with benefits payable under 38 U.S.C. chapter 33 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680, 3690, 6103)

(b) *Institution of higher learning.* (1) VA may hold an institution of higher learning liable for overpayments that result from the institution of higher learning's willful or negligent failure to report excessive absences from a course, discontinuance of a course, or interruption of a course by an individual or from willful or negligent false certification by the institution of higher learning. See § 21.9695(b).

(2) If an institution of higher learning willfully and knowingly submits a false report or certification, VA may disapprove that institution of higher learning's programs of education for further enrollments and may discontinue educational assistance to eligible individuals already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

**§ 21.9745 Reporting fee.**

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, VA will apply the provisions of § 21.4206 in the same manner as they are applied in the administration of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

COURSE ASSESSMENT

**§ 21.9750 Course measurement.**

VA will calculate an individual's rate of pursuit of an approved program of education during the individual's period of enrollment in accordance with this section. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(a) *Measurement of courses reported in credit hours.* If the courses are measured in credit hours, then the number of credit hours the individual is taking in a term, quarter, or semester will be divided by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester at the institution of higher learning as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(b) *Measurement of courses reported in clock hours.* If the courses are measured in clock hours, VA will—

(1) Convert the clock hours to equivalent credit hours by—

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1)(i) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(1)(ii) of this section rounded to the nearest hundredth by—

(A) If the institution of higher learning measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the institution by the number of clock hours considered full-time at the institution.

(B) If the institution of higher learning only measures courses using clock hours, the decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the institution.

(2) Divide the result of paragraph (b)(1) rounded to the nearest hundredth by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(c) Fourteen credit hours are full-time unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition or are considered full-time for other administrative purposes.

(d) *High school courses.* If an individual using transferred entitlement is eligible for pursuit of a secondary school diploma or equivalency certificate, VA will determine the rate of pursuit in accordance with this paragraph. For individuals pursuing high school courses measured in—

(1) Credit hours, VA will use the formula in paragraph (a) of this section.

(2) Clock hours, VA will use the formula in paragraph (b) of this section.

(3) Units, VA will convert the units to credit hours as follows—

(i) Divide the total number of units required for the program of education by 4 (the number of ordinary school years generally required for completion);

(ii) Round the result of paragraph (d)(3)(i) of this section to the nearest whole number.

(iii) Multiply the result of paragraph (d)(3)(ii) of this section by:

(A) 1.0 to determine the number of units required for a rate of pursuit equal to 100 percent. This number is equivalent to 14 credit hours;

(B) .75 to determine the number of units required for a rate of pursuit equal to 75 percent. An individual will be considered to be enrolled in 10.5 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(A) of this section;

(C) .50 to determine the number of units required for a rate of pursuit equal to 50 percent. An individual will be considered to be enrolled in 7 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(B) of this section;

(D) .25 to determine the number of units required for a rate of pursuit equal to 25 percent. An individual will be considered to be enrolled in 3.5 credit hours for any number of units up to the number determined in paragraph (d)(3)(iii)(C) of this section.

(Authority: 38 U.S.C. 3319(h))

APPROVAL OF PROGRAMS OF EDUCATION

### § 21.9765 Program of education approval.

VA may provide educational assistance for pursuit of a program of education offered by an institution of higher learning if that program of education is approved under 38 U.S.C. chapter 30 in accordance with §§ 21.7220 and 21.7222.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a))

ADMINISTRATIVE

### § 21.9770 Administrative.

In administering chapter 33, VA will apply the sections noted in paragraphs (a) through (f) of this section. For the purpose of application, the term ''veteran'' as used in these sections is deemed to mean ''an eligible individual under 38 U.S.C. chapter 33,'' and the term ''38 U.S.C chapter 30'' as used in these sections is deemed to mean ''38 U.S.C. chapter 33''.

(a) Section 21.7301—Delegations of authority;

(b) Section 21.7302—Finality of decisions;

(c) Section 21.7303—Revision of decisions;

(d) Section 21.7305—Conflicting interests;

(e) Section 21.7307—Examination of records; and

(f) Section 21.7310—Civil rights.

(Authority: 38 U.S.C. 511, 512(a), 3034(a), 3323(a), 3690, 3696)

# PART 23—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

## Subpart A—Introduction

Sec.

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