

## Department of Veterans Affairs

## § 21.7280

(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 service-member 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 tele-

vision) 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

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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 regula-

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tions, 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.