

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE General Service Administration

Section 213.3337 is amended to show that three positions of Confidential Assistant to the Administrator and one position of Confidential Assistant to the Deputy Administrator are no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, paragraph (a) of § 213.3337 is amended by revoking subparagraph (4) and amending subparagraph (9) as set out below.

§ 213.3337 General Services Administration.

- (a) *Office of the Administrator.* * * *
- (4) [Revoked]

- (9) One Confidential Assistant to the Deputy Administrator.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521, 3 CFR, 1954-1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 66-4986; Filed, May 5, 1966; 8:50 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 66-93]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Customs Forms Abolished

Customs Form 3745, "Affidavit of Use of Bonded Salt in Curing Fish on Vessels," customs Form 3751, "Affidavit of Principal on Withdrawal Bond as to Salt Withdrawn From Warehouse and Used in Curing Fish," and customs Form 3753, "Affidavit of Two Persons Actually Employed in Curing Fish on Shore as to the Quantity of Salt Used for That Purpose," have been abolished.

Although this action was taken on the basis of our conclusion that the regulation which prescribed the forms (§ 10.82, Customs Regulations) was sufficiently detailed so that separate forms were not necessary, the amendment re-

quired to delete reference to the forms from the regulations was inadvertently not made. In order that that omission may be corrected, § 10.82(a) of the Customs Regulations is amended as follows:

Subparagraph (1) is amended by substituting "A" for "The" before "certificate", and by deleting ", customs Form 3751," so that that subparagraph will read as follows:

(1) A certificate of the person making the withdrawal that the salt has been actually used in curing fish taken by vessels of the United States licensed to engage in the fisheries or in curing fish on the shores of navigable waters of the United States, giving the names of the vessels, tonnage, names of masters, the approximate quantity of fish cured thereby, and the locality in the district where cured if cured on shore;

Subparagraph (2) is amended by substituting "A" for "The" before "certificate", and by deleting ", customs Form 3745," so that that subparagraph will read as follows:

(2) A certificate of the master and of at least one other person employed on board any vessel during any voyage on which it is claimed that any part of the salt so withdrawn for curing fish was used, that the salt delivered to the vessel by the person making the withdrawal was actually used in curing fish taken by such vessel; and

Subparagraph (3) is amended by deleting ", customs Form 3753," so that that subparagraph will read as follows:

(3) The certificates of at least two persons actually employed in curing fish on shore (if two or more were so employed) if any part of such salt was so used, stating the quantity of salt used in curing fish on shore and where cured, that it was used in curing fish taken by American fishermen, and the approximate quantity of fish cured.

Section 10.82(b) is amended by substituting "a" for "the" before "certificate" and by deleting ", customs Form 3751," so that that subparagraph will read as follows:

(b) If the person making the withdrawal is actually employed in curing the fish on shore, a certificate of one other person so employed will be sufficient.

(Sec. 313 (e), (1), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (1))

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: April 28, 1966.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 66-4968; Filed, May 5, 1966; 8:49 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 548—AUTHORIZATION OF ESTABLISHED BASIC RATES FOR COMPUTING OVERTIME PAY

Exclusion of Certain Petty Sums

In the March 9, 1966, issue of the FEDERAL REGISTER (31 F.R. 4149), there was published a proposal to amend Part 548 of Title 29 of the Code of Federal Regulations to increase from 30 to 50 cents a week the maximum amount that may be excluded from overtime compensation otherwise required under the Fair Labor Standards Act by reason of certain complex "regular rate" computations.

Interested persons were given 15 days in which to file statements of data, views, or argument in regard to this proposal. None were received. Accordingly, the proposal is hereby adopted effective June 5, 1966, as set forth below.

1. Paragraph (e) of § 548.3 is amended to read as follows:

§ 548.3 Authorized basic rates.

(e) The rate or rates (not less than the rates required by section 6 (a) and (b) of the act) which may be used under the act to compute overtime compensation of the employee but excluding additional payments in cash or in kind which, if included in the computation of overtime under the act, would not increase the total compensation of the employee by more than 50 cents a week on the average for all overtime weeks (in excess of the number of hours applicable under section 7(a) of the act) in the period for which such additional payments are made.

2. Section 548.305 is amended to read as follows:

§ 548.305 Excluding certain additions to wages.

(a) Section 548.3(e) authorizes as established basic rates: "The rate or rates (not less than the rates required by section 6 (a) and (b) of the act) which may be used under the act to compute overtime compensation of the employee but excluding additional payments in cash or in kind which, if included in the computation of overtime under the act, would not increase the total compensation of the employee by more than 50 cents a week on the average for all overtime weeks (in excess of the number of hours applicable under section 7(a) of the act) in the period for which such additional payments are made."

(b) Section 548.3(e) permits the employer, upon agreement or understanding with the employee, to omit from the computation of overtime certain incidental payments which have a trivial effect on the overtime compensation due. Examples of payments which may be excluded are: modest housing, bonuses or prizes of various sorts, tuition paid by the employer for the employee's attendance at a school, and cash payments or merchandise awards for soliciting or obtaining new business. It may also include such things as payment by the employer of the employee's social security tax.

(c) The exclusion of one or more additional payments under § 548.3(e) must not affect the overtime compensation of the employee by more than 50 cents a week on the average for the overtime weeks.

Example. An employee, who normally would come within the 40-hour provision of section 7(a) of the act, is paid a cost-of-living bonus of \$260 each calendar quarter, or \$20 per week. The employee works overtime in only 2 weeks in the 13-week period, and in each of these overtime weeks he works 50 hours. He is therefore entitled to \$2 as overtime compensation on the bonus for each week in which overtime was worked (i.e., \$20 bonus divided by 50 hours equals 40 cents an hour; 10 overtime hours, times one-half, times 40 cents an hour, equals \$2 per week). Since the overtime on the bonus is more than 50 cents on the average for the 2 overtime weeks, this cost-of-living bonus would not be excluded from the overtime computation under section 548.3(e).

(d) It is not always necessary to make elaborate computations to determine whether the effect of the exclusion of a bonus or other incidental payment on the employee's total compensation will exceed 50 cents a week on the average. Frequently the addition to regular wages is so small or the number of overtime hours is so limited that under any conceivable circumstances exclusion of the additional payments from the rate used to compute the employee's overtime compensation would not affect the employee's total earnings by more than 50 cents a week. The determination that this is so may be made by inspection of the payroll records or knowledge of the normal working hours.

Example. An employer has a policy of giving employees who have a perfect attendance record during a 4-week period a bonus of \$10. The employee never works more than 50 hours a week. It is obvious that exclusion of this attendance bonus from the rate of pay used to compute overtime compensation could not affect the employee's total earnings by more than 50 cents a week.¹⁴

(e) There are many situations in which the employer and employee cannot predict with any degree of certainty the amount of bonus to be paid at the end of the bonus period. They may not be able to anticipate with any degree of certainty the number of hours an employee might work each week during the bonus period. In such situations the employer and employee may agree prior to the performance of the work that a bonus will

be disregarded in the computation of overtime pay if the employee's total earnings are not affected by more than 50 cents a week on the average for all overtime weeks during the bonus period. If it turns out at the end of the bonus period that the effect on the employee's total compensation would exceed 50 cents a week on the average, then additional overtime compensation must be paid on the bonus. (See § 778.209 of this chapter, for an explanation of how to compute overtime on the bonus.)

(f) In order to determine whether the exclusion of a bonus or other incidental payment would affect the total compensation of the employee by not more than 50 cents a week on the average, a comparison is made between his total compensation computed under the employment agreement and his total compensation computed in accordance with the applicable overtime provisions of the act.

Example. An employee, who normally would come within the 40-hour provision of section 7(a) of the act, is paid at piece rates and at one and one-half times the applicable piece rates for work performed during hours in excess of 40 in the workweek. The employee is also paid a bonus, which when apportioned over the bonus period, amounts to \$2 a week. He never works more than 50 hours a week. The piece rates could be established as basic rates under the employment agreement and no additional overtime compensation paid on the bonus. The employee's total compensation computed in accordance with the applicable overtime provision of the act, section 7(f)(1),¹⁵ would be affected by not more than 20 cents in any week by not paying overtime compensation on the bonus.¹⁶

(g) Section 548.3(e) is not applicable to employees employed at subminimum wage rates under learner certificates, or special certificates for handicapped workers, or in the case of employees in Puerto Rico or the Virgin Islands employed at special minimum rates authorized by wage orders issued pursuant to the act.

(Sec. 7, 52 Stat. 1063, as amended; 29 U.S.C. 207)

Signed at Washington, D.C., this 2d day of May 1966.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 66-4984; Filed, May 5, 1966;
8:50 a.m.]

PART 800—EQUAL PAY FOR EQUAL WORK UNDER FAIR LABOR STANDARDS ACT

Equality and Inequality of Pay in Particular Situations; Commissions

Pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), Re-

¹⁴ Section 7(f)(1) of the act provides that overtime compensation may be paid at one and one-half times the applicable piece rate but extra overtime compensation must be properly computed and paid on additional pay required to be included in computing the regular rate.

¹⁵ Bonus of \$2 divided by 50 hours equals 4 cents an hour. Half of this hourly rate multiplied by 10 overtime hours equals 20 cents.

organization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R. 3290), I hereby amend paragraph (e) of § 800.116 of Part 800 of Title 29 of the Code of Federal Regulations to read as set forth below.

The provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) which require notice of proposed rule making, opportunity for public participation, and delay of effective date are not applicable because 29 CFR Part 800 consists only of interpretative rules. I do not believe such procedures will serve a useful purpose here. Accordingly, the amendment shall become effective immediately.

As amended 29 CFR 800.116(e) reads as follows:

§ 800.116 Equality and inequality of pay in particular situations.

(e) *Commissions.* The establishment of different rates of commission on different types of merchandise would not result in a violation of the equal pay provisions where the factor of sex provides no part of the basis for the differential. For example, suppose that a retail store maintains two shoe departments, each having employees of both sexes, that the shoes carried in the two departments differ in style, quality, and price, and that the male and female sales clerks in the one department are performing "equal work" with those in the other. In such a situation, a prohibited differential would not result from payment of a lower commission rate in the department where a lower price line with a lower markup is sold than in the other department where the merchandise is higher priced and has a higher markup, if the employer can show that the commission rates paid in each department are applied equally to the employees of both sexes in the establishment for all employment in that department and that the factor of sex has played no part in the setting of the different commission rates.

(52 Stat. 1060, as amended; 77 Stat. 56; 29 U.S.C. 201 et seq.)

Signed at Washington, D.C., this 2d day of May 1966.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 66-4985; Filed, May 5, 1966;
8:50 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 2—DELEGATIONS OF AUTHORITY

Chief Benefits Director, et al.

In Part 2, §§ 2.78, 2.79, 2.80, 2.81, and 2.82 are revised to read as follows:

¹⁴ For a 50-hour week, an employee's bonus would have to amount to \$5 a week to affect his overtime compensation by 50 cents.

§ 2.78 Except as otherwise provided, Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of Compensation, Pension and Education Service designated by him delegated authority to make findings and decisions under 38 U.S.C. Chapters 34, 35, and 36 and applicable regulations, precedents and instructions, as to programs of education or special restorative training.

This delegation of authority is identical to § 21.4001(a) of this chapter.

§ 2.79 Chief Benefits Director delegated authority to enter into agreements for reimbursement of State approving agencies under § 21.4153 of this chapter.

This delegation of authority is identical to § 21.4001(b) of this chapter.

§ 2.80 Director, Compensation, Pension and Education Service delegated authority to waive penalties for conflicting interests under § 21.4005 of this chapter.

This delegation of authority is identical to § 21.4001(c) (1) of this chapter.

§ 2.81 Director, Compensation, Pension, and Education Service delegated authority to exercise the functions otherwise required of State approving agencies, under § 21.4150(c) of this chapter.

This delegation of authority is identical to § 21.4001(c) (2) of this chapter.

§ 2.82 Director, Compensation, Pension, and Education Service delegated authority to approve courses under § 21.4250(c) of this chapter.

This delegation of authority is identical to § 21.4001(c) (3) of this chapter.

By direction of the Administrator,

[SEAL] A. H. MONK,
Acting Deputy Administrator.

[F.R. Doc. 66-4907; Filed, May 5, 1966; 8:45 a.m.]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Miscellaneous Amendments

1. In § 21.20(c), subparagraph (1) is amended to read as follows:

§ 21.20 Vocational rehabilitation.

(c) *Training in a foreign country.* (1) Vocational rehabilitation may not be afforded to a veteran outside of a State (see § 3.1(i) of this chapter) based on post-World War II service if the veteran was not a citizen of the United States when he rendered such service (38 U.S.C. 1502(c)).

2. Sections 21.21 and 21.22 are revised to read as follows:

§ 21.21 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

A person who is eligible for vocational rehabilitation training under chapter 31 and is also eligible for educational assistance under chapters 34 or 35 must

elect which benefit he will receive. The election is subject to the restrictions specified in § 21.4022 (38 U.S.C. 1661(d), 1711(c)).

§ 21.22 Nonduplication; Federal programs.

Neither vocational rehabilitation training nor subsistence allowance may be authorized for any period during which the veteran is enrolled in and pursuing a course of education or training under a Federal program which is subject to the restrictions contained in § 21.4025.

3. In § 21.131, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 21.131 Commencing dates.

The commencing date of an award or increased award of subsistence allowance will be determined under this section, but will not be authorized for any period prior to the earliest date for which disability compensation is payable, or would be payable except for the receipt of retirement pay.

4. Section 21.136 is revised to read as follows:

§ 21.136 Two-veteran cases; dependents.

The payment of additional subsistence allowance under § 21.133 to a veteran for a wife who is also a veteran and for a child will not bar the payment of additional subsistence allowance or educational assistance allowance under § 21.4136 to the wife for her husband and the same child. The husband of a female veteran may be considered a dependent only if he meets the requirements of § 3.51(a) of this chapter.

5. In § 21.224, paragraph (b) is amended to read as follows:

§ 21.224 Effective date of induction into training.

(b) A veteran, however, may be inducted into vocational rehabilitation training retroactively when the facts, equities, and demonstrated good faith on the part of the veteran justify such action.

6. In Part 21, a new Subpart B is added to read as follows:

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. Chapter 34

GENERAL

Sec.
21.1020 Educational assistance.
21.1021 Definitions.
21.1022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.
21.1025 Nonduplication; Federal programs.

CLAIMS

21.1030 Claims.
21.1031 Informal claims.
21.1032 Time limits.

ELIGIBILITY AND ENTITLEMENT

21.1040 Basic eligibility.
21.1041 Periods of entitlement.
21.1042 Ending dates of eligibility.
21.1045 Entitlement charges.

AUTHORITY: The provisions of this Subpart B issued under 72 Stat. 1114, 80 Stat. 12; 38 U.S.C. 210, chapter 34.

Subpart B—Veterans' Educational Assistance Under 38 U.S.C. 210, Chapter 34

GENERAL

§ 21.1020 Educational assistance.

(a) *General.* A program of education may be authorized for a veteran whose service meets the requirements of § 21.1041.

(b) *36 months limitation.* Educational assistance may not exceed a period of 36 months, or the equivalent in part-time training, except as specified in § 21.1041.

(c) *Training in a foreign country.* A course to be pursued at a school not located in a State may not be approved except under the circumstances outlined in § 21.4260.

§ 21.1021 Definitions.

(a) "Eligible veteran" or "veteran" means a veteran whose service meets the requirements of § 21.1040. Unless otherwise specifically identified the terms include a person on active duty who has basic eligibility for educational assistance under the provisions of § 21.1040(e).

(b) "Active duty" means active duty as defined in § 3.6(b) (1) of this chapter (38 U.S.C. 1652(a); 1682(b)). See §§ 21.1040, 21.1042, and 21.4136.

(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 (38 U.S.C. 101(20); Pub. Law 89-358).

§ 21.1022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

A person who is eligible for educational assistance under chapter 34 and is also eligible for vocational rehabilitation under chapter 31 or educational assistance under chapter 35 must elect which benefit he will receive. The election is subject to the restrictions specified in § 21.4022.

§ 21.1025 Nonduplication; Federal programs.

Educational assistance is subject to the restrictions contained in § 21.4025 with respect to a veteran who is pursuing a course of education or training under a Federal program (38 U.S.C. 1781).

CLAIMS

§ 21.1030 Claims.

A specific claim in the form prescribed by the Administrator must be filed by the veteran in order for an educational assistance allowance to be paid (38 U.S.C. 1671).

§ 21.1031 Informal claims.

(a) Any communication from a veteran, an authorized representative or a Member of Congress indicating an intent to apply for educational assistance 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 sent to the veteran for execution. If received within 1 year after the date it was sent to the veteran, it will be considered filed as of the date of receipt of the informal claim.

(b) The act of enrolling in an approved school does not in itself constitute an informal application.

§ 21.1032 Time limits.

The provisions of this section are applicable to original applications, formal or informal, and to applications for increased educational assistance allowance by reason of the existence of a dependent.

(a) *Completion of claim.* Where evidence requested in connection with a claim is not furnished within 1 year after the date of request, or the veteran for other than a reason determined by the Veterans Administration to have been beyond his control, fails to report for a required scheduled counseling appointment within 1 year after the scheduled date, the claim will be considered abandoned. After the expiration of 1 year, further action will not be taken unless a new claim is received.

(b) *New claim.* Where an application has been considered abandoned, any subsequent communication which meets the requirements of an informal claim will be considered a new application. The date of receipt of such later communication will be considered the date of application. Where counseling was required, educational assistance allowance may not be paid for any period prior to the date the veteran reports for counseling.

(c) *Failure to furnish claim or notice of time limit.* Failure to furnish any form or information concerning the right to file claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

CROSS REFERENCES: Notice to claimants. See § 3.103 of this chapter.
Computation of time limit. See § 3.110 of this chapter.

ELIGIBILITY AND ENTITLEMENT

§ 21.1040 Basic eligibility.

Basic eligibility for educational assistance to subject to the following requirements:

(a) *Service.* The veteran must have served on active duty for a continuous period of 181 days or more, any part of which occurred on or after February 1, 1955, or if he served for less than 181 days, must have been discharged or released on or after February 1, 1955, because of service-connected disability. Travel time which meets the requirements of § 3.6(b) (6) of this chapter may be included.

(b) *Periods excluded.* In computing the 181 days service, there will be excluded any period during which he:

(1) Was assigned full time by the service department to a civilian school 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 10 U.S.C. 511(d) in an enlistment in the Army National Guard or the Air National Guard, or as a reservist in the

Army, Navy, Air Force, Marine Corps, or Coast Guard Reserve; or

(4) Is not entitled to credit for service for the periods of time specified in § 3.15 of this chapter.

(c) *Periods excluded; Korean conflict veterans.* Where a veteran has received education or training under the Veterans' Readjustment Assistance Act of 1952, Title II, or 38 U.S.C. chapter 33 (as in effect before Feb. 1, 1965) as a Korean conflict veteran based on service which extended beyond January 31, 1955, the months of service after January 31, 1955, which were previously used to establish eligibility for the education or training received will be excluded in determining eligibility credits for educational assistance under chapter 34.

(d) *Discharge or release.* The veteran must have received an unconditional discharge or release under conditions other than dishonorable from the period of service on which eligibility is predicated. A discharge or release will be considered unconditional if the veteran was eligible for complete separation from active duty on the date the discharge was issued. 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.

(e) *Persons on active duty.* Educational assistance may be afforded a person while on active duty if he:

(1) Meets the requirements applicable to a discharged veteran under paragraphs (a), (b), and (d) of this section, or

(2) Has served a total of 2 or more years (730 days or more) on active duty, any part of which occurred on or after February 1, 1955, excluding periods of time specified in § 3.15 of this chapter. Educational assistance otherwise payable may be provided under this subparagraph so long as he continues on active duty.

(38 U.S.C. 1652, Pub. Law 89-358)

CROSS REFERENCES: Duty periods. See § 3.6(b) of this chapter.

Persons included. See § 3.7 of this chapter.

§ 21.1041 Periods of entitlement.

(a) *General.* (1) A veteran or a person on active duty who meets the requirements of § 21.1040 will be eligible for full-time educational assistance for a period computed on the basis of 1 month (or the equivalent in part-time educational assistance) for each month or fraction of month of service on active duty on or after February 1, 1955, but not in excess of 36 months. There will be excluded from the period of entitlement the periods specified in § 21.1040 (b) and (c).

(2) The veteran may use his entitlement at any time during the 8-year period determined under § 21.1042. It is not required that the entitlement time will be used in consecutive months.

(b) *Prior Veterans Administration training.* The period of entitlement for educational assistance when added to education or training received under any or all of the following laws, will not exceed 36 months of full-time educa-

tional assistance, except where an extension is authorized under paragraph (d) of this section. A reduction in the period of entitlement by reason of prior training will be computed as provided in paragraph (c) of this section.

(1) Veterans Regulation No. 1(a), Parts VII or VIII;

(2) Veterans' Readjustment Assistance Act of 1952, Title II;

(3) War Orphans' Educational Assistance Act of 1956;

(4) Title 38, United States Code, chapters 31, 33 (as in effect before February 1, 1965), or 35.

(c) *Reduction for prior Veterans Administration training.* Where the period of entitlement is subject to reduction by reason of prior training the period remaining after subtracting the period of prior training will be converted to months and quarter fractions of a month. Periods of less than a month will be converted to quarter fractions as follows:

1 to 7 days, inclusive—one-fourth month.
8 to 15 days, inclusive—one-half month.
16 to 23 days, inclusive—three-fourth month.
24 to 31 days, inclusive—full month.

(d) *Extension.* The period of entitlement, including the 36 months period, may be extended, but not beyond the 8-year delimiting date specified in § 21.1042:

(1) To the end of a term, quarter, or semester in a school regularly operated on a term, quarter or semester system, when the period of entitlement ends during the term, quarter or semester.

(2) To the end of the course or for 12 weeks, whichever is less, in all other schools, when the period of entitlement ends after more than half of the course has been completed.

(38 U.S.C. 1661; Pub. Law 89-358)

§ 21.1042 Ending dates of eligibility.

The ending date of eligibility will be the latest of the following dates:

(a) *General.* No educational assistance will be afforded a veteran later than 8 years after his last discharge or release from active duty after January 31, 1955.

(b) *Correction of military records.* If the veteran became eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552 or a change, correction, or modification of a discharge or dismissal pursuant to 10 U.S.C. 1553, or other corrective action by competent military authority, educational assistance will not be afforded later than 8 years after the date his discharge or dismissal was changed, corrected or modified.

(c) *Discharge or release before June 1, 1966.* Where eligibility is based on a discharge or release from active duty before June 1, 1966, educational assistance will not be afforded later than May 31, 1974.

(d) *Discontinuance.* If the veteran is pursuing a course on the date of expiration of eligibility as determined under this section, the educational assistance allowance will be discontinued effective

the day preceding the end of the 8-year period.

(38 U.S.C. 1662; Pub. Law 89-358)

§ 21.1045 Entitlement charges.

(a) *General.* Charges against a period of entitlement will be made in terms of full months and fractions of a month for periods during which the veteran is enrolled in an approved course. Where a program of education is pursued on a full-time basis the total elapsed time will be charged. Where a program is pursued on a three-fourths, one-half time or less than half-time basis, a proportionate rate of the elapsed time will be charged. Where the computation results in a period of time other than a full month, or exactly three-fourths, one-half, or one-fourth fractional part of a month, the figure will be reduced to the next lower quarter.

(b) *Correspondence courses.* A charge against the period of entitlement for a program of education conducted exclusively by correspondence will be made on the basis of one-fourth of the elapsed time during which the course is pursued. The date of commencement for pursuit of a correspondence course will be the date the first lesson is sent to the veteran; the date of discontinuance will be the date the last lesson is serviced by the school (38 U.S.C. 1682 (c) (2)).

(c) *Less than half-time.* A charge against the period of entitlement for a program of education pursued at less than half-time will be made on the basis of one-fourth of the elapsed time during which the course is pursued.

(d) *Active duty.* A charge against the period of entitlement for a program of education pursued by a veteran or serviceman on active duty will be made on the basis of the credit hours for which enrolled or clock hours of attendance. See § 21.4270.

(e) *Elapsed time.* The elapsed time will be computed from commencing date of enrollment to date of discontinuance on the basis of full calendar months and quarter fractions of a month. The fractional months are those periods other than full calendar months at the beginning and end of the enrollment period. These partial months will be converted to fractions of a month, or to full months, in accordance with the following table. No charge will be made for any quarter month in which the full quarter was not utilized.

Commencing date of enrollment sec. 21.4131	Elapsed time	Date of discontinuance sec. 21.4135	Elapsed time
1st day of month.	Full month.	1st to 7th day of month, inclusive.	No charge.
2d to 7th, inclusive.	$\frac{1}{4}$ month.	8th to 15th, inclusive.	$\frac{1}{4}$ month.
8th to 15th, inclusive.	$\frac{1}{2}$ month.	16th to 23d, inclusive.	$\frac{1}{2}$ month.
16th to 23d, inclusive.	$\frac{3}{4}$ month.	24th to day before end of month, inclusive.	$\frac{3}{4}$ month.
24th to 31st, inclusive.	No charge.	Last day of month.	Full month.

§§ 21.3001—21.3009 [Revoked]

7. In Subpart C, §§ 21.3001 through 21.3009 are revoked.

8. In § 21.3020, paragraphs (a) and (c) are amended to read as follows:

§ 21.3020 Educational assistance.

(a) *General.* A program of education or special restorative training may be authorized for a child whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces after the beginning of the Spanish-American War (38 U.S.C. 1701 (d)). The requirements of basic eligibility of a child are set forth in § 3.807 of this chapter.

(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.

9. In § 21.3021, paragraphs (a) and (e) are amended to read as follows:

§ 21.3021 Definitions.

(a) "Eligible person" means a son or daughter of a veteran who died of a service-connected disability or has a total disability permanent in nature arising from a service-connected disability or who died while a disability so evaluated was in existence, arising out of active military, naval or air service after April 20, 1898. See §§ 3.6 and 3.807 of this chapter.

(e) "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.)

10. Section 21.3022 is revised to read as follows:

§ 21.3022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for vocational rehabilitation under 38 U.S.C. chapter 31 or educational assistance under chapter 34, must elect which benefit he will receive. The election is subject to the restrictions specified in § 21.4022.

11. In § 21.3023(c), subparagraph (1) is amended to read as follows:

§ 21.3023 Nonduplication; pension, compensation and dependency and indemnity compensation.

(c) *Election.* The commencement of a program of education constitutes an election.

(1) Except as provided in subparagraph (2) of this paragraph, an election is final when the payee has negotiated one check for this benefit.

12. Section 21.3025 is revised to read as follows:

§ 21.3025 Nonduplication; Federal programs.

Educational assistance is subject to the restrictions contained in § 21.4025 with respect to an eligible person who is pursuing a course of education or training under a Federal program (38 U.S.C. 1781).

13. In § 21.3041, paragraphs (d) (3) and (e) footnotes 1 and 2 are amended to read as follows:

§ 21.3041 Periods of eligibility.

(d) *Modified ending date.* * * * (3) Date of first unconditional discharge or release from "duty with the Armed Forces" served as an eligible person if he served after age 18 and before age 23. See § 21.3042.

(e) *Extensions to ending dates.* * * * (2) * * *

"Processing time" means the period of time which elapses between the eligible person's 18th birthday or the date of receipt of the application, whichever is later, and the date on which the Certificate for a Program of Education is signed by an authorized official, or would have been signed except that the expected date of enrollment is more than 60 days in the future.

(3) * * * * Such extension applies, without regard to whether the midpoint of the quarter, semester, or course has been reached, when a son or daughter who, while enrolled, ceases to be an eligible person because the parent from whom eligibility is derived is found to no longer have a "total disability permanent in nature" § 21.4135(o).

14. In § 21.3042, paragraph (a) is amended to read as follows:

§ 21.3042 Service with Armed Forces.

(a) No educational assistance may be provided an otherwise eligible person during any period he is on duty with the Armed Forces. See § 21.3021 (c) and (d). This does not apply to brief periods of active duty for training. See § 21.4135 (n).

15. In § 21.3043, the introductory portion preceding paragraph (a) is amended to read as follows:

§ 21.3043 Suspension of program.

For an eligible person who suspends his program due to conditions determined by the Veterans Administration to have been beyond his 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 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 fol-

lowing circumstances may be considered as beyond the eligible person's control:

16. In § 21.3044, paragraph (a) is amended to read as follows:

§ 21.3044 Entitlement.

(a) Each eligible person is entitled to educational assistance for a period not in excess of 36 months, or the equivalent thereof in part-time training. The period of entitlement will be reduced by the full-time equivalent of any period of vocational rehabilitation received by him under 38 U.S.C. chapter 31, or education under chapter 33 or 34. The period of entitlement will not be reduced by any period during which subsistence allowance was paid after determination of employability following vocational rehabilitation. Where the period of entitlement is subject to reduction by reason of prior training the period remaining after subtracting the period of prior training will be converted to months and quarter fractions of a month. Periods of less than a month will be converted by using the table in § 21.1041(c).

17. Section 21.3045 is revised to read as follows:

§ 21.3045 Entitlement charges.

Charges against the period of entitlement of an eligible person pursuing a program of education will be made in accordance with § 21.1045 (a) and (e).

§§ 21.3100—21.3278 [Revoked]

18. Sections 21.3100 through 21.3278 are revoked.

19. In § 21.3302, paragraph (d) is revoked.

§ 21.3302 Agreements.

(d) [Revoked]

20. In § 21.3330, paragraphs (a), (b) (2), and (c) are amended to read as follows:

§ 21.3330 Payments.

(a) Payments will be made to the person designated to receive the payments under the provisions of § 21.4139.

(b) * * *

(2) An educational assistance allowance is paid.

(c) The following regulations governing the payment of educational assistance allowance apply to the payment of special restorative training allowance:

(1) Section 21.4140, *Apportionment*.

(2) Section 21.4141, *Offsets; pension, compensation and dependency and indemnity compensation*.

21. Section 21.3331 is revised to read as follows:

§ 21.3331 Commencing dates.

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 Vocational Rehabilitation Board approved such course for the eligible person, whichever is later. See also § 21.4131.

22. In § 21.3332, paragraph (c) is amended to read as follows:

§ 21.3332 Discontinuance dates.

(c) Date of discontinuance under the applicable provisions of § 21.4135.

23. Section 21.3333 is revised to read as follows:

§ 21.3333 Rates.

(a) *Rates.* Special training allowance is payable at the following monthly rate.

Course	Monthly rate	Accelerated charges
Special restorative training.	\$130	If costs for tuition and fees average in excess of \$41 per month, rate may be increased by such amount in excess of \$41.

(b) *Accelerated charges.* The additional monthly rate may be paid if the parent or guardian concurs in having the eligible person's period of entitlement reduced by 1 day for each \$4.25 that the special training allowance exceeds the basic monthly rate of \$130. Fractions of more than one-half day will be charged as 1 day; fractions of one-half or less will be disregarded. Charges will be recorded when the eligible person is entered into training (38 U.S.C. 1742).

24. In Part 21, a new Subpart D is added to read as follows:

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

ADMINISTRATIVE

Sec.

- 21.4001 Delegations of authority.
- 21.4002 Finality of decisions.
- 21.4003 Revision of decisions.
- 21.4005 Conflicting interests.
- 21.4006 False or misleading statements.
- 21.4007 Forfeiture.
- 21.4008 Overpayments.
- 21.4009 Overpayments; waiver or recovery.

GENERAL

- 21.4022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.
- 21.4025 Nonduplication; Federal programs.

COUNSELING

- 21.4100 Counseling.
- 21.4101 Requirement; 38 U.S.C. chapter 34.
- 21.4102 Requirement; 38 U.S.C. chapter 35.
- 21.4103 Failure to cooperate.
- 21.4104 Travel expenses.
- 21.4105 Special training; 38 U.S.C. chapter 35.
- 21.4106 Counseling; change or reentrance.

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

- 21.4130 Educational assistance allowance.
- 21.4131 Commencing dates.
- 21.4132 Waiver of time limits.
- 21.4133 Change of rates.
- 21.4134 Withholding and discontinuance.
- 21.4135 Discontinuance dates.
- 21.4136 Rates; educational assistance allowance; 38 U.S.C. chapter 34.
- 21.4137 Rates; educational assistance allowance; 38 U.S.C. chapter 35.
- 21.4138 Certifications.
- 21.4139 Payee.
- 21.4140 Apportionment.

Sec.

- 21.4141 Offsets; 38 U.S.C. chapter 35; pension, compensation and dependency and indemnity compensation.

STATE APPROVING AGENCIES

- 21.4150 Designation.
- 21.4151 Cooperation.
- 21.4152 Control by agencies of the United States.
- 21.4153 Reimbursement of expenses.

SCHOOLS

- 21.4200 Definition.
- 21.4201 Schools listed by Attorney General.
- 21.4202 Overcharges; restrictions on enrollments.
- 21.4203 Reports by schools; requirements.
- 21.4204 Periodic certifications.
- 21.4205 Absences.
- 21.4207 Failure of school to meet requirements.
- 21.4208 Central Office Education and Training Review Panel.
- 21.4209 Examination of records.

PROGRAMS OF EDUCATION

- 21.4230 Requirements.
- 21.4231 Educational plan; 38 U.S.C. chapter 35.
- 21.4232 Specialized vocational training; 38 U.S.C. chapter 35.
- 21.4233 Combination.
- 21.4234 Change of program.

COURSES

- 21.4250 Approval of courses.
- 21.4251 Period of operation of course.
- 21.4252 Courses precluded.
- 21.4253 Accredited courses.
- 21.4254 Nonaccredited courses.
- 21.4255 Refund policy; nonaccredited courses.
- 21.4256 Correspondence courses; 38 U.S.C. chapter 34.
- 21.4257 Cooperative courses.
- 21.4258 Notice of approval.
- 21.4259 Disapproval.
- 21.4260 Courses in foreign countries.

ASSESSMENT AND PURSUIT OF COURSE

- 21.4270 Measurement of courses.
- 21.4271 Trade or technical; high schools.
- 21.4272 Collegiate undergraduate; credit-hour basis.
- 21.4273 Collegiate graduate.
- 21.4274 Professional; nonaccredited.
- 21.4275 Professional; accredited.
- 21.4276 Special assistance; 38 U.S.C. chapter 35.
- 21.4277 Discontinuance; unsatisfactory progress.
- 21.4278 Reentrance after discontinuance.

AUTHORITY: The provisions of this Subpart D issued under 72 Stat. 1114; 38 U.S.C. 210.

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

ADMINISTRATIVE

§ 21.4001 Delegations of authority.

(a) Except as otherwise provided, authority is delegated to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Compensation, Pension, and Education Service designated by him to make findings and decisions under 38 U.S.C. chapters 34, 35, and 36 and the applicable regulations, precedents, and instructions, as to programs of education or special restorative training.

(b) Authority is delegated to the Chief Benefits Director to enter into agreements for reimbursement of State approving agencies under § 21.4153.

(c) Authority is delegated to the Director, Compensation, Pension, and Education Service to exercise the functions required of the Administrator for:

(1) Waiver of penalties for conflicting interests under § 21.4005;

(2) Actions otherwise required of State approving agencies, under § 21.4150(c);

(3) Approval of courses under § 21.4250(c).

§ 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 Veterans Administration 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 §§ 19.153 and 19.154 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.

§ 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(c).

§ 21.4005 Conflicting interests.

(a) *General.* (1) Every officer or employee of the Veterans Administration who has, while such an officer or employee, owned any interest in, or received any wages, salary dividends, profits, gratuities, or services from, any school operated for profit in which a veteran or eligible person was pursuing a course of education under 38 U.S.C. chapter 34 or 35 will be immediately dismissed from his office or employment.

(2) If the Administrator finds that any person who is an officer or employee of a State approving agency has, while he was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, a school operated for profit in which a veteran or eligible person was pursuing a course of education or training under chapter 34 or 35, payments under § 21.4153 to such State approving agency will be discontinued unless such agency takes, without delay, such steps

as may be necessary to terminate the employment of such person and payments will not be resumed while such person is an officer or employee of the State approving agency, or State Department of Veterans' Affairs or State Department of Education.

(3) A State approving agency will not approve any course offered by a school 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 Veterans Administration, or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or services from, such school.

(4) The Administrator 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 Veterans Administration 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 (38 U.S.C. 1783).

(b) *Waiver.* 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, if the officer or employee:

(1) Acquired his interest in the school by operation of law, or before the statute became applicable to the officer or employee, and his interest has been disposed of and his connection discontinued, or

(2) Meets all of the following conditions:

(i) His 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.

(ii) His position has no relationship with the processing of any veteran's or eligible person's application for education or training.

(iii) His position precludes him from taking any adjudicative action on individual applications for education or training.

(iv) His position does not require him to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 38 U.S.C. chapters 34 and 35.

(v) His position is not connected with the processing of claims by, or payments to, schools, or students enrolled therein under the provisions of 38 U.S.C. chapters 34 and 35.

(vi) His work is not connected in any way with the inspection, approval, or supervision of schools desiring to train veterans or eligible persons.

(c) *Authority.* (1) Authority is delegated to the Director, Compensation, Pension, and Education Service and to the field station head in cases of Veterans Administration employees under his jurisdiction, to waive the application of paragraph (a) (1) of this section in

the case of any Veterans Administration employee who meets the criteria of paragraph (b) of this section and to deny requests for waiver which do not meet such criteria. If the circumstances warrant, the request may be submitted to the Administrator for decision.

(2) Authority is reserved to the Administrator to waive the requirement of paragraph (a) (1) of this section in the case of an officer of the Veterans Administration, and in the case of any employee who does not meet all of the criteria of paragraph (b) of this section.

(d) *Disapproval of courses.* Where it is found that an officer or employee of the Veterans Administration has any interest in, or receives any wages, salary, dividends, profits, gratuities, or services from any such school, and waiver has not been granted, the State approving agency and the school will be notified immediately that the courses offered by the school shall be disapproved, the reason for disapproval, and the conditions under which the disapproval may be lifted.

(e) *Notice to veterans and eligible persons.* The veteran or eligible person will be notified in writing sent to his latest address of record when:

(1) The course or courses are disapproved by the State approving agency, or

(2) 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

(3) Waiver has been denied.

The veteran or eligible person will be informed that he may apply for enrollment in an approved course in another school, 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.

§ 21.4006 False or misleading statements.

(a) 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 (38 U.S.C. 1787).

(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) Where the falsity of a certification or claim is discovered after payment has been released an overpayment will be set up for only that portion of the claim to which the claimant was not entitled.

(b) A determination that false or misleading statements have been made will not constitute a bar to payments based on further training, if the requirements

of § 21.4008(b) as to waiver or recovery of any overpayment have been satisfied.

(c) The provisions of this section are not for application where forfeiture of all rights has been or may be declared under the provisions of § 21.4007.

§ 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 §§ 19.1, 19.2, and 19.3 of this chapter (38 U.S.C. 3503, 3504, and 3505).

§ 21.4008 Overpayments.

(a) *Denial of further benefits.* Where an overpayment of educational assistance or special training allowance or other gratuitous benefit has been made to or on behalf of a veteran or eligible person, no further payments of educational assistance allowance or special training allowance will be made to the veteran or eligible person until the overpayment has been collected or arrangements have been made for repayment, unless recovery has been waived.

(b) *Benefits following recovery or waiver.* Where a veteran or eligible person has been denied entrance or reentrance under this section and subsequently liquidates or makes arrangements to liquidate the outstanding overpayment, or the overpayment has been waived, the effective date of entrance or reentrance will be determined under § 21.4131 or as to eligible persons in special restorative training, under § 21.3331.

(c) *Prevention of overpayments.* Where there is a question on whether approval of a course should be withdrawn, and it appears that overpayments may exist or be created, further payments to veterans or eligible persons enrolled in the school may be withheld pending resolution of the question. See § 21.4134.

§ 21.4009 Overpayments; waiver or recovery.

(a) *General.* The amount of an overpayment of educational assistance allowance or special training allowance on behalf of a veteran or eligible person constitutes a liability of the school if it is determined that the overpayment was made as the result of (1) willful or negligent failure of the school to report, as required by § 21.4204, excessive absences from a course, or discontinuance or interruption of a course by the veteran or eligible person, or (2) false certification by the school. The amount of the overpayment may be recovered from the school in the same manner as any other debt due the United States. Any amount so collected from the school will be reimbursed if the overpayment is recovered from the veteran or eligible person. This provision does not preclude the imposition of any civil or criminal liability under this or any other law (38 U.S.C. 1785).

(b) *False certification.* Liability resulting from a false certification is not contingent upon willfulness or negligence, but simply upon a finding that the overpayment resulted from a certifica-

tion which was contrary to fact at the time it was made and therefore false.

(c) *Evidence.* A determination will be made whether there is prima facie evidence that an overpayment is the result of a false certification. When the decision is in the affirmative the school will be notified in writing of the Veterans Administration's intent to apply the liability provisions of paragraph (a) of this section. The notice will also state that unless a written request for a hearing is filed within 30 days of the receipt of such notice, a determination of liability will be made on the evidence of record. The case will then be referred to the Committee on Waivers for the field station having jurisdiction where the school is located.

(d) *Committees on Waivers.* If the overpayment amounts to less than \$2,500, and jurisdiction is not assumed by Central Office, Chairmen and Section Chairmen, Committees on Waivers in the field stations having jurisdiction over the school are authorized to find:

(1) Whether recovery may be waived as to the veteran or eligible person.

(2) Liability of the school.

(3) Liability of both the school and the veteran or eligible person.

(e) *Extent of liability.* Waiver of collection of an overpayment as to a veteran or eligible person will not relieve the school of liability for the overpayment. Recovery in whole or in part from the veteran or eligible person will limit such liability accordingly. If an overpayment has been recovered from the school and the veteran or eligible person subsequently repays the amount in whole or in part, the amount repaid will be reimbursed to the school.

(f) *Notice to school.* If the school is found liable for an overpayment, the school will be notified of the decision and the right to request an administrative review of the decision within 60 days from the date notice of the decision is mailed to the school. The 60-day time limit may be extended to 90 days at the discretion of the Liability Review Section, Compensation, Pension, and Education Service. The request must be in writing, setting forth fully all of the contentions and errors assigned.

(g) *Liability Review Section.* Administrative review will be conducted by the Liability Review Section, whose decisions will serve as authority for instituting collection proceedings, if appropriate, or to discontinue collection proceedings instituted on the basis of the original decision of the regional Committee on Waivers in any case where the Review Section reverses a finding made by the regional Committee that the school is liable.

(h) *Review and modification.* The Liability Review Section may review and modify its decision upon submission of new and material evidence. The regional Committee will forward such evidence with its recommendation.

CROSS REFERENCE: Waiver; educational benefits. See § 3.1908 of this chapter.

GENERAL

§ 21.4022 Nonduplication; 38 U.S.C. chapters 31, 34, and 35.

(a) *Election.* A veteran or eligible person who is eligible for education or training under more than one program under 38 U.S.C. chapters 31, 34, and 35 must elect which benefit he will receive. The election must be in writing, except as provided in paragraph (b) of this section.

(1) If he elects vocational rehabilitation under chapter 31 he will have no further right to benefits under chapter 34 or 35.

(2) If he elects educational assistance under chapter 34 or 35 he will have no further right to vocational rehabilitation, except that such election will not bar him from a course of vocational rehabilitation to overcome a handicap arising out of a period of service subsequent to the election.

(3) If he elects either chapter 34 or 35 benefits he may at any time elect or reelect the other, subject to continuing eligibility.

(b) *Inferred election.* A veteran or an eligible person will be considered to have made his election if he:

(1) Enters or resumes a program of education under chapter 34 or 35, or special restorative training under chapter 35, after he has been notified of potential rights to vocational rehabilitation under chapter 31, or

(2) Continues to pursue a program of education or special restorative training for a period of more than 30 days after such notification without having filed an application for vocational rehabilitation, or

(3) Having filed an application for vocational rehabilitation, continues to pursue a program of education or special restorative training for a period of more than 30 days after the date of notice that he has been found in need of vocational rehabilitation.

(c) *Prior training.* (1) Where a veteran or an eligible person becomes entitled to and elects to receive vocational rehabilitation after having commenced a program of education under chapter 34 or 35, or special restorative training under chapter 35, the program of education or special restorative training previously pursued shall be utilized to the fullest extent practicable in determining the character and duration of vocational rehabilitation to be furnished him (38 U.S.C. 1661(d), 1711(c)).

(2) Where a veteran who is also an eligible person has received educational assistance under chapter 34 or chapter 35, the program of education previously pursued will be utilized to the fullest extent practicable in determining the character and duration of the course for which enrollment may be approved under the other chapter.

§ 21.4025 Nonduplication; Federal programs.

(a) *General.* Neither educational assistance allowance nor special training allowance may be authorized for any

period during which the veteran or eligible person is enrolled in and pursuing a course of education or training paid for by the United States in whole or in part under any other provision of law, where the educational assistance would constitute a duplication of benefits from the Federal Treasury. This includes the receipt of a stipend paid under a grant or fellowship or receipt of a payment as a trainee or student under any program administered by another Federal agency if the stipend or payment is to provide an allowance for living expenses or tuition and is paid from the Federal Treasury to the veteran or eligible person or to his parent or guardian in his behalf (38 U.S.C. 1781).

(b) *Programs barred.* The bar to concurrent payments includes the following:

(1) An Atomic Energy Commission fellowship,

(2) A Public Health Service fellowship,

(3) A National Science Foundation fellowship,

(4) The U.S. Maritime Commission training program,

(5) The Financial Assistance program in the Senior Reserve Officers' Training Corps of the Air Force, Army or Navy (Pub. Law 88-647) (similar to the former regular Navy ROTC program, Holloway Plan),

(6) The program provided under the Universal Military Training and Service Act (Pub. Law 51, 82d Cong.),

(7) The Veterans Administration Career Resident program as a full-time physician of the Veterans Administration Department of Medicine and Surgery,

(8) Tuition assistance paid by a service department to a person on active duty,

(9) A National Defense Education Act fellowship (Pub. Law 85-864, as amended), and

(10) Educational assistance under the Manpower Development and Training Act (Pub. Law 87-415).

(c) *Programs not barred.* Educational assistance allowance or special training allowance is not barred solely because the veteran or eligible person is:

(1) Enrolled in a land-grant college which is receiving Morrill-Nelson and Bankhead-Jones funds,

(2) Enrolled in a vocational training course conducted under the Act of February 23, 1917, as amended or the Vocational Educational Act of 1946 (Pub. Law 586, 79th Cong.),

(3) Enrolled in a school and participating in the 2-year Senior Reserve Officers' Training Corps, or the 4-year Senior ROTC program of the Air Force, Army, or Navy, other than the Financial Assistance program (see par. (b) (5) of this section),

(4) Participating in an on-the-job training program in a governmental establishment, such as a Navy Yard,

(5) Receiving benefits under Public Law 87-256 (Fulbright Act),

(6) Participating in the residency and internship program operated by the Veterans Administration Department of

Medicine and Surgery under the provisions of 38 U.S.C. 4114(b) or in the Veterans Administration training program for clinical psychologists, social workers or similar programs and being paid for part-time work, or

(7) Receiving assistance as part of a Work-Study program under the Economic Opportunity Act (Pub. Law 88-452).

COUNSELING

§ 21.4100 Counseling.

(a) The purpose of counseling is to assist in selecting an objective, in developing a suitable program of education or training and in resolving any personal problems which are likely to interfere with successful pursuit of a program.

(b) Counseling not required by Veterans Administration regulations may be provided upon request so long as the counselor determines that it will aid the veteran or eligible person in obtaining maximum benefit from the pursuit of a program of education.

§ 21.4101 Requirement; 38 U.S.C. chapter 34.

(a) Counseling is not required for approval of an initial course selected by a veteran or for a change from such course when conduct and progress are satisfactory.

(b) Except as required by § 21.4106, counseling may be required before a second change of program is approved, or before a change of program or reentrance is approved where an earlier course was discontinued because of unsatisfactory conduct or progress. See § 21.4277.

§ 21.4102 Requirement; 38 U.S.C. chapter 35.

Counseling is required for the eligible person before approval of an initial course, reentrance after discontinuance because of unsatisfactory conduct or progress, or a change of program. The counselor will assist in preparing an educational plan if requested by the eligible person, his parent or guardian (38 U.S.C. 1720).

§ 21.4103 Failure to cooperate.

When counseling is required and a veteran or eligible person fails to report for or fails to cooperate in the counseling process, further action on the application will not be taken. See §§ 21.1032 and 21.3032.

§ 21.4104 Travel expenses.

Travel at Government expense to and from the place of counseling may be authorized for the veteran or eligible person whenever counseling is required, but not when provided as the result of a voluntary request (38 U.S.C. 111).

§ 21.4105 Special training; 38 U.S.C. chapter 35.

(a) Counseling will be provided a handicapped person before a case is considered by the Vocational Rehabilitation Board (established under § 21.715) for determination of need for a course of specialized vocational training or for special restorative training.

(b) When an eligible person completes or discontinues a course of special restorative training without having selected an objective and a program of education, additional counseling will be provided to assist in selecting a program of education.

§ 21.4106 Counseling; change or reentrance.

(a) *When required.* Counseling, or additional counseling, will be required under the following circumstances unless it is found by the counselor that the change requested is from a program that was not considered suitable in the initial counseling to a program which is supported by the counseling data, and need for additional counseling is not shown.

(1) *38 U.S.C. chapter 34.* For a change from the initial program if interrupted or discontinued due to the veteran's own misconduct, neglect, or lack of application, for any second change of program, or for resumption of a course of education which had been discontinued because of unsatisfactory conduct or progress under § 21.4277.

(2) *38 U.S.C. chapter 35.* For any change of program or for resumption of a course of education which had been discontinued because of unsatisfactory conduct or progress under § 21.4277.

(b) *Approval.* The counselor will recommend approval of a change of program or reentrance into the same program, if he finds that the program which the veteran or eligible person proposes to pursue is suitable to his aptitudes, interests, and abilities; and where the veteran's or eligible person's program has been interrupted, or he has failed to progress in, his program due to his own misconduct, neglect or lack of application, the cause for the unsatisfactory conduct or progress has been removed and there exists a reasonable likelihood that there will not be a recurrence of such an interruption or failure to progress. Negative determinations involving unsatisfactory conduct or progress will be made by the Vocational Rehabilitation Board.

PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

§ 21.4130 Educational assistance allowance.

Educational assistance allowance will be paid at the rate specified in § 21.4136 or § 21.4137 while the veteran or eligible person is pursuing a course of education. No payment will be made, however, based on a course not leading to a standard college degree, for excessive absences as determined under § 21.4205 (b).

(a) The commencing date will be the date of entrance or reentrance into a course as determined under § 21.4131.

(b) The ending date will be the earliest of the following dates:

(1) The ending date of the course or period of enrollment as certified by the school.

(2) The ending date of the veteran's eligibility as determined under §§ 21.1041 and 21.1042.

(3) The ending date of the eligible person's eligibility as determined under §§ 21.3041 and 21.3042.

(4) The ending date specified in § 21.4135.

§ 21.4131 Commencing dates.

The commencing date of an award or increased award of educational assistance allowance will be determined under this section.

(a) *Entrance or reentrance including change of program or school* (§ 21.4234).

(1) The date certified by school as provided in paragraph (b) or (c) of this section, or date of approval of course, whichever is later, if application for entrance or reentrance or request for change is received not later than 15 days after date certified by school and notice of State approving agency's approval is received not later than 60 days after date of approval.

(2) If time limits specified in subparagraph (1) of this paragraph are not met, the date of receipt of application or request for change, or 60 days prior to receipt of notice of approval by State approving agency.

(3) The time limits specified in subparagraphs (1) and (2) of this paragraph may be waived under § 21.4132.

(b) *Certification by school; course leads to standard college degree.* The date of registration, or the date of reporting where the student is required by published standards of the school to report in advance of registration, but not later than the date the person first reports for classes.

(c) *Certification by school; course does not lead to standard college degree.* First date of class attendance.

(d) *Reopened application after abandonment* (§§ 21.1032 and 21.3032). The date the veteran or eligible person reports for counseling if pursuing an approved course.

(e) *Increase for dependent; chapter 34.* Date of entrance or reentrance into program if dependent shown on the application and evidence is received within 1 year after date of request; otherwise date of receipt of claim for dependent or date entitlement for dependent arose, whichever is later, subject to 1-year time limit for filing evidence.

(f) *Liberalizing laws and Veterans Administration issues.* In accordance with facts found, but not earlier than the effective date of the act or administrative issue.

CROSS REFERENCE: Special restorative training. See § 21.3331.

§ 21.4132 Waiver of time limits.

The time limits specified in § 21.4131 (a) may be waived under the following circumstances:

(a) *Veteran or eligible person.* The time limit for filing application or request for a change of program or place of training may be waived if the facts, equities and demonstrated good faith on the part of the veteran for purposes of 38 U.S.C. chapter 34, or on the part of the parent, guardian, or eligible person for purposes of 38 U.S.C. chapter 35, warrant such waiver.

(b) *State approving agency.* The time limit for receipt of notice of approval from the State approving agency may be waived if the facts, equities and demonstrated good faith on the part of the veteran, parent, guardian, or eligible person and the State approving agency warrant such waiver, and

(1) Approval action was not denied or withheld for cause during the retroactive period, and

(2) Credit is granted toward completion of the course from the date of approval.

§ 21.4133 Change of rate.

An increase or reduction in the monthly rate of educational assistance allowance because of a change in the extent of the course being pursued, e.g., change from full-time to part-time pursuit of a course, will be effective the first day of the month following the month in which the change occurred.

§ 21.4134 Withholding and discontinuance.

Notwithstanding the approval of a course by a State approving agency, educational assistance allowance may be discontinued if it is determined that the course of education in which the individual is enrolled fails to meet, or the school has violated, any of the requirements of chapters 34, 35, or 36 (38 U.S.C. 1686, 1736). Where preliminary evidence indicates that it would be to the best interests of the Government, the station head may withhold further payments to persons enrolled in the school until a determination has been made as to whether approval should be withdrawn and whether overpayments exist. Payments will be promptly released whenever the facts developed justify such action.

§ 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.* Last date of attendance.

(b) *Death of dependent.* Last day of month in which death occurs.

(c) *Divorce.* Last day of month in which divorce occurs.

(d) *Child—(1) Marriage.* Last day of month in which marriage occurred.

(2) *Age 18.* Day preceding 18th birthday.

(3) *School attendance.* Last day of month in which school attendance ceased or day preceding 23d birthday, whichever is earlier.

(4) *Helplessness ceased.* Last day of month following 60 days after notice to the payee that helplessness has ceased.

(e) *Course discontinued.* Last date of attendance or, if enrollment certified for ordinary school year and veteran or eligible person has completed one or more terms, but does not return for the next term, discontinuance will be effective the end of the term completed.

(f) *Discontinued by Veterans Administration* (§§ 21.4134 and 21.4207). End of month in which action is taken.

(g) *Unsatisfactory progress* (§ 21.4277). The date the veteran's or eligible person's enrollment is discontinued by the school or the date of administrative determination by the Veterans Administration, whichever is earlier.

(h) *Monthly certifications not received after certification of enrollment* (§§ 21.4203 and 21.4204). (1) Date of enrollment if no certifications are received for first two reporting periods.

(2) The end of the month for which the last payment was properly made, if payments have been made for one or more periods and certifications are not received for two consecutive reporting periods.

(i) *False or misleading statements.* See § 21.4006.

(j) *Disapproval by State approving agency* (§ 21.4259(a)). End of month in which disapproval is effective or notice of disapproval is received in Veterans Administration, whichever is later.

(k) *Disapproval by Veterans Administration* (§§ 21.4207 and 21.4259(c)). End of month in which disapproval occurred.

(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) *School listed by Attorney General* (§ 21.4201). Day before date of listing.

(n) *Active duty* (§§ 21.4136(a) and 21.8042). Day before entrance on active duty. (Does not apply to brief periods of active duty for training if school permits such absence without interruption of training; however, where course does not lead to standard college degree, the absence must be reported as required by § 21.4205.)

(o) *Veteran no longer rated permanent total disabled; chapter 35* (§ 21.3041). End of quarter or semester if school is operated on quarter or semester system.

(2) End of course or 9 weeks whichever is earlier, if school is not operated on quarter or semester system.

(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 knowledge.

(2) Date of last payment on an erroneous award based solely on administrative error or error in judgment.

(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). End of month in which reduction occurred.

CROSS REFERENCE: *Special restorative training*. See § 21.3332.

§ 21.4136 Rates; educational assistance allowance; 38 U.S.C. chapter 34.

(a) *Rates*. Educational assistance allowance is payable for periods commencing on or after June 1, 1966, at the following monthly rates.

Type of courses	Monthly rate		
	No dependents	1 dependent	2 or more dependents
Institutional:			
Full time.....	\$100	\$125	\$150
¾ time.....	75	95	115
½ time.....	50	65	75
Less than ½ time.....	(1)	(1)	(1)
Cooperative (full time only).....	80	100	120
Correspondence.....	(2)	(2)	(2)

¹ See paragraph (b) of this section.
² Established charge for number of lessons completed by veteran and serviced by school—allowance paid quarterly.

(b) *Active duty or less than half-time*. Educational assistance allowance for an individual who is eligible solely by reason of the provisions of § 21.1040(e) (2) and is pursuing an institutional course while on active duty or for any individual who is pursuing an institutional course on less than half-time basis will be computed on the lesser of the following rates:

(1) The established charges for tuition and fees which the school requires similarly circumstanced nonveterans enrolled in the same course to pay, or

(2) \$100 per month for a full-time course.

(c) *June 1966*. A veteran who commenced a course prior to June 1, 1966, will not be paid for any part of the month of June 1966, unless his course continues through June 30, 1966. (Sec. 12(a), Pub. Law 89-358.)

(d) *Excessive absences*. When enrollment is in a course which does not lead to a standard college degree absences in excess of the maximum number allowable will cause a reduction in the educational assistance allowance payable for the month in which such absences occurred. The rate of reduction will be determined by the following table:

Days of scheduled attendance per week	Rate of reduction for each day of excessive
5 or more.....	½
4.....	⅔
3.....	⅘
2.....	⅞
1.....	⅞

(e) *Dependents*. The term "dependent" means a wife, child, or dependent parent who meets the definitions of relationship specified in §§ 3.50, 3.51, 3.57, and 3.59 of this chapter. A child adopted outside the veteran's family is included only if the veteran is contributing to the child's support.

(f) *Two-veteran cases; dependents*. The payment of additional educational

assistance allowance to a veteran for a wife who is also a veteran and for a child will not bar the payment of additional educational assistance allowance or additional subsistence allowance under § 21.133 to the wife for her husband and the same child. The husband of a female veteran may be considered a dependent only if he meets the requirements of § 3.51(a) of this chapter.

(38 U.S.C. 1682)

§ 21.4137 Rates; educational assistance allowance; 38 U.S.C. chapter 35.

(a) *Rates*. Educational assistance allowance is payable at the following monthly rates.

Type of course	Monthly rate		
	Full time	¾ time	½ time
Institutional.....	\$130	\$95	\$60
Cooperative (full time only).....	105	None	None

(b) *Less than half-time*. No educational assistance allowance will be paid when an institutional course is pursued at less than half time (38 U.S.C. 1732).

(c) *Excessive absences*. Reduction of educational assistance allowance by reason of excessive absences in a course which does not lead to a standard college degree will be made in the same manner described in § 21.4136(d) (38 U.S.C. 1732).

§ 21.4138 Certifications.

Educational assistance allowance will be paid to or on behalf of a veteran or eligible person under chapter 34 or 35 for any period only after the Veterans Administration has received a report which shows that the individual has been pursuing his course. The report must be certified by the student on a form provided by the Veterans Administration for that purpose. Where the student is enrolled in a course which does not lead to a standard college degree, or a course pursued exclusively by correspondence, a certification from the school is required. On certifications of enrollment, periodic certifications and absences, see §§ 21.4203, 21.4204, and 21.4205 respectively.

§ 21.4139 Payee.

(a) *Educational assistance allowance; chapter 34*. Payment will be made to the veteran or to a duly appointed fiduciary. Direct payment to the veteran may be made notwithstanding his minority.

(b) *Educational assistance allowance; chapter 35*. (1) Payment will be made to the eligible person if he has attained majority and has no known legal disability or, notwithstanding his minority, where it is found to be in his best interests unless there is some known reason why he should not be designated as payee.

(2) Where the eligible person is not designated as payee, payments will be made to the parent or guardian of the

eligible person, to a fiduciary or to some other suitable person.

§ 21.4140 Apportionment.

Educational assistance allowance is not subject to apportionment.

§ 21.4141 Offsets; 38 U.S.C. chapter 35; pension, compensation and dependency and indemnity compensation.

Payment of educational assistance allowance 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 (38 U.S.C. 1762).

CROSS REFERENCE: *Discontinuance of pension, compensation or dependency and indemnity compensation*. See § 3.503(h) of this chapter.

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. 1771(a)).

(b) The Chief Executive of each State will notify the Veterans Administration of any change in the designation of a State approving agency.

(c) If any State does not have and fails or declines to create or designate a State approving agency, the provisions of 38 U.S.C. chapter 36 which refer to the State approving agency will, with respect to such State, be deemed to refer to the Administrator (38 U.S.C. 1771(b)). See § 21.4001(c).

(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 (38 U.S.C. 212(a), 1761(b)).

CROSS REFERENCE: *Approval of courses*. See § 21.4250.

§ 21.4151 Cooperation.

(a) The Veterans Administration 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 Veterans Administration and the State approving agencies is essential (38 U.S.C. 1773(a)).

(b) State approving agencies are responsible for inspecting and supervising schools within the borders of their respective States and for determining those courses which may be approved for the enrollment of veterans and eligible persons. They are also responsible for ascertaining whether a school at all times complies with its established standards relating to the course or courses which have been approved.

(c) The Veterans Administration will furnish State approving agencies with

copies of such Veterans Administration informational and instructional material as may aid them in carrying out the provisions of 38 U.S.C. chapter 36 (38 U.S.C. 1773(b)).

§ 21.4152 Control by agencies of the United States.

(a) 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.

(38 U.S.C. 1782)

(b) The provisions of paragraph (a) of this section do not restrict the authority conferred on the Veterans Administration:

(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 § 21.4202.

(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.

(5) To disapprove schools or courses for reasons stated in the law and to approve schools or courses notwithstanding lack of State approval.

§ 21.4153 Reimbursement of expenses.

(a) *General.* If a State or local agency requests to be paid for service contemplated by the law, and submits information prescribed in paragraph (e) of this section, contracts or agreements will be negotiated with such State agencies to pay for the reasonable and necessary expenses of salary and travel incurred by its employees in:

(1) Determining the qualification of educational institutions for furnishing courses of training to veterans and eligible persons and in the supervision of such educational institutions. Supervision for which reimbursement may be made will consist of services required in determining that the courses are furnished in accordance with the criteria set forth in the law or prescribed by the State approving agencies pursuant to the law and upon which the original approval was granted, and of those services required in disapproving any courses which fall below the established criteria.

(2) Furnishing any other services in connection with the law as may be requested by the Veterans Administration.

(b) *Reimbursement.* The Chief Benefits Director is authorized to enter into agreements for reimbursement to the extent necessary to fulfill the purpose of paragraph (a) of this section. See § 21.4001(b).

(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 contract will not be in excess of the established rate of pay for other employees of the State having comparable or equivalent duties and responsibilities and will further be limited to the actual salary expense incurred by the State.

(2) *Travel.* Travel expenses for which reimbursement may be authorized under contract will be determined on the basis of expenses allowable under applicable State laws or travel regulations of the State or agency and will be for travel actually performed by employees specified under the terms of the contract. Reimbursement for travel will be provided only to cover actual expenses for transportation, meals, lodging, and local telephone calls, or the regular per diem allowance in lieu thereof. In claiming reimbursement for travel authorized under the terms of a contract, all claims 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. Reimbursement will be made for expenses of attending out-of-State meetings and conferences only where the travel is performed upon prior approval and at the request of the Director, Compensation, Pension, and Education Service.

(3) *Committee assignments.* Reimbursement may also be authorized for the salary and travel of the employee of the State approving agency serving as a designated member of the field station Committee on Educational Allowances.

(d) *Nonreimbursable expenses.* Reimbursement will not be provided under reimbursement contracts for:

(1) Expenditures other than salaries and travel of personnel required to perform the services specified in the contract and Veterans Administration 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; or services rendered as members of a field station Committee on Educational Allowances.

(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 em-

ployment 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 where such agency is responsible for establishing, conducting, and supervising the courses approved.

(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) Personnel requirements for which reimbursement is to be provided will be determined on the basis of estimated workloads as agreed upon between the Veterans Administration and the State agency. Such agreements will be subject to constant review and any necessary adjustment.

(2) Workloads will be determined upon three factors: (i) Inspection and approval visits, (ii) supervisory visits, and (iii) special visits at request of the Veterans Administration.

(f) *Contract compliance.* Reimbursement under each contract or agreement will be conditioned upon compliance with the standards and provisions of the contract and the law. If it is determined that the State has failed to comply with the standards and provisions of the law and with the terms of the reimbursement contract, the station head will withhold reimbursement for claimed expenses under the contract. In any instance in which the State takes exception to the field station action, the matter will be referred to the Director, Compensation, Pension, and Education Service, for review (38 U.S.C. 1774).

SCHOOLS

§ 21.4200 Definition.

(a) *School.* The term "school," "educational institution," or "institution" means any public or private secondary school, vocational school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or any other institution if it furnishes education at the secondary school level or above.

(1) *Chapter 34.* The term includes correspondence schools.

(2) *Chapter 35.* The term includes institutions which provide specialized vocational courses for the mentally or physically handicapped generally recognized as on the secondary school level or above (38 U.S.C. 1652(c) and 1701 (a) (6)).

(b) *Quarter; semester.* These terms include:

(1) "Term," any regularly established division of the ordinary school year under which the school operates.

(2) "Quarter," a division of the ordinary school year, usually a period from 10 to 13 weeks long.

(3) "Semester," a division of the ordinary school year, usually a period from 15 to 19 weeks long.

(4) "Summer quarter" (term or session), the whole of the summer period of instruction specified for the course in which the veteran or eligible person is enrolled, without regard to any divisions of such a period which may be made by the institution for administrative or other purposes.

§ 21.4201. Schools listed by Attorney General.

Enrollment may not be approved for a course in a school while it is listed by the Attorney General under section 12, Executive Order 10450 (38 U.S.C. 1789).

§ 21.4202 Overcharges; restrictions on enrollments.

(a) *Overcharges.* When it is found that a school has charged or received from any veteran or eligible person any amount in excess of the established charges for tuition and fees which the school requires from similarly circumstanced nonveterans or noneligible persons enrolled in the same course, the school may be disapproved for enrollment of any person not already enrolled in the school. A school disapproved for chapter 35 purposes before March 3, 1966, is considered disapproved for chapter 34 purposes for enrollment of any veteran not already enrolled (38 U.S.C. 1684). See § 21.4207.

(b) *Restrictions on enrollments.* A school will be disapproved for further enrollments or reenrollments, and educational assistance allowance to veterans or eligible persons already enrolled will be discontinued when one or more of the following conditions has been found to exist:

(1) The school has willfully and knowingly submitted a false report or certification concerning a student or his course of education which has or could result in an improper payment of allowances.

(2) The school has willfully and knowingly failed to report to the Veterans Administration excessive absences, discontinuance, or interruption of education, which has resulted or could result in improper payment of allowances.

(3) The school through gross negligence has submitted improper or incorrect reports which have resulted or could result in improper payment of allowances. This condition will not be found to exist where:

(i) The improper report occurs only in an isolated instance or instances; or

(ii) It is the first occurrence and the school has not been previously notified in writing; or

(iii) The improper report or reports represent a very small proportion of the reports submitted by the school and may be attributed to clerical errors and are shown not to be the result of failure upon the part of the school to provide

and maintain a recording and reporting procedure which under normal circumstances would result in proper reports to the Veterans Administration.

(4) The school has, after being notified in writing of a violation of a provision of law or of failure of a course to meet the specific requirements of law other than approval criteria, failed to correct the situation within 30 days of date of such notice or has knowingly and willfully repeated the violation.

(5) The school, after having been disapproved for the enrollment of any veteran or eligible person not already enrolled therein, has willfully and knowingly repeated the violation.

(6) The school fails or refuses to make available for examination to duly authorized representatives of the Government records and accounts pertaining to the education of veterans and eligible persons enrolled therein under chapters 34 and 35.

(7) The requirements of §§ 21.4250, 21.4253, and 21.4254 are not being met in respect to a substantial number of veterans and eligible persons, written notice having been given to the State approving agency as to specific violations and such violations have not been eliminated within 30 days following such notice or 60 days following such notice when the station head determines that conditions warrant allowing the additional time to take corrective action.

(c) *Restrictions; 85 percent enrollment.* Enrollment under chapter 34 will not be approved for any veteran, not already enrolled, in any nonaccredited course below the college level offered by a proprietary school during any period when more than 85 percent of the students enrolled in the course are having all or any part of their tuition, fees, or other charges paid to or for them by the school or the Veterans Administration under chapters 31, 34, or 35 (38 U.S.C. 1673(d)).

§ 21.4203 Reports by schools; requirements.

(a) *General.* Educational institutions are required to report promptly the entrance, reentrance, change in hours of credit, or attendance, interruption, and termination of attendance of each veteran or eligible person who is enrolled.

(b) *Entrance or reentrance.* The certification must clearly specify the program objective. Upon receipt of a certification of enrollment, an official authorization will be issued showing the beginning and ending dates of each period for which an allowance may be paid. The authorization will be for the period of enrollment or the extent of the eligible person's entitlement, whichever is the lesser.

(1) Schools organized on a term, quarter, or semester basis may report enrollment for the term, quarter, or semester, or for the ordinary school year. Enrollment certifications for the ordinary school year are encouraged. A summer session may not be included as part of the ordinary school year but must be reported separately.

(2) Schools 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 school closes for summer vacation, the dates of any intervals between the dates of any intervals between periods of instruction which occur in the summer and any intervals designated in the school's approval data as breaks between school years. No allowances are payable for these intervals.

(c) *Course changes.* Any changes in the number of credit hours or the clock hours of attendance or instruction or any other modification in the course as certified at enrollment must be reported promptly to the Veterans Administration.

(d) *Interruptions and terminations.* When a veteran or eligible person interrupts or terminates his training for whatever reason, including unsatisfactory conduct or progress, this fact must be reported promptly to the Veterans Administration.

(1) Where the school is required to submit monthly certifications, the information required by this paragraph and paragraph (c) of this section should be included in the endorsement to the veteran's or eligible person's certification.

(2) In other cases the school will initiate the certification. Information regarding any changes or an interruption or termination of training must be reported during or immediately after the end of the month in which the event occurred.

(e) *Correspondence courses.* Where the course in which a veteran is enrolled under 38 U.S.C. chapter 34, is pursued exclusively by correspondence the school will report by an endorsement on the veteran's certification the number of lessons completed by the veteran and serviced by the school. Such reports will be submitted quarterly.

(f) *Monthly certification—(1) Courses not leading to standard college degree.* A certification must be submitted monthly, except as provided in paragraph (e) of this section, for each veteran and eligible person enrolled in a course which does not lead to a standard college degree. See § 21.4204. The report will consist of a certification containing the information required for release of payment, signed by the veteran or eligible person and the school on or after the final date of the reporting period. The date on which each person signed must be clearly shown. The only exception to the requirement of two signatures is a certification of interruption of training when the veteran or eligible person is not available for signature.

(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 monthly certifications for students enrolled in such courses. Certifications are, however, required under paragraphs (b), (c), and (d) of this section.

§ 21.4204 Periodic certifications.

Educational assistance allowance is payable only after the Veterans Administration has received the required certification that the veteran or eligible per-

son has been pursuing his course during the reporting period.

(a) *Reports by veterans and eligible persons.* A veteran or eligible person enrolled in a course which leads to a standard college degree must submit to the Veterans Administration a monthly report certifying as to continued enrollment in and pursuit of his course during the month. Reports by other veterans and eligible persons will be submitted in accordance with § 21.4203 (e) or (f).

(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) Absences. See § 21.4205.

(3) Conduct and progress. See § 21.4277.

(4) Date of interruption or termination of training.

(5) Changes in number of semester hours or clock hours of attendance.

(6) 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, the periodic certification will show the intervals between terms, quarters, or semesters as absences. This also applies to intervals between the ordinary school year and a summer session.

(2) By term, quarter, or semester, the periodic certification will not cover the intervals between terms, quarters, or semesters.

(d) *Year-round courses.* Where appropriate, the monthly certification will show the dates on which the school closed for summer vacation, the date of any intervals between periods of instruction which occurred in the summer, and the dates of any intervals which are designated in the approval data as breaks between school years.

§ 21.4205 Absences.

Absences must be reported on the monthly certification of pursuit of a course which does not lead to a standard college degree.

(a) *General.* Absence will be charged for a full day when the veteran or eligible person did not attend any scheduled class on that day. Tardiness will be charged when the veteran or eligible person was late for the start of the school day. A partial day of absence will be charged for any period of absence during or at the end of a day.

(b) *Maximum allowable absences.* Maximum allowable absences will be determined as provided in this paragraph.

(1) For a 12-month course requiring attendance for 5 or more days a week, 30 days.

(2) For a 12-month course requiring attendance for less than 5 days a week, the pro rata part of 30 days which the number of days per week of scheduled attendance bears to 5.

(3) If the length of the course is not 12 months or a multiple of 12, allowable absences will be figured separately for each 12-month period and for any period which is less than 12 months.

(4) In computing pro rata allowable absences a fraction of one-half day or less will be disregarded. A fraction greater than one-half day will be counted as 1 day.

(5) Unused allowable absences may not be carried over from one 12-month period to another, or from one school year to another.

(c) *Reporting.* (1) Veterans and eligible persons must report each full day of absence from scheduled attendance as well as days when the school was closed for Federal, State or local holidays and school holidays and intervals between terms, quarters or semesters. When the school is closed for the weekend, those days will not be reported. However, if classes are normally scheduled for Saturday and Sunday, absences must be reported.

(2) The school will verify the full days of absence reported and endorse the report. In addition, the school will convert partial days of absence to full days in accordance with the following formula and report the accumulated total.

(i) Compute the average hours of daily attendance. (Divide the hours of required attendance per week by the days of required attendance per week.)

(ii) Total the absences of less than a full day which occurred during the month (see subpar. (3) of this paragraph).

(iii) Divide the total hours of absence for the month (subdivision (ii) of this subparagraph) by the average hours of daily attendance (subdivision (i) of this subparagraph) to determine the full days of absence to be reported.

(3) An occasional tardiness (not more than two per week) of one-half hour or less will not be counted if it is excused by the school. Tardiness which is not excused and tardiness of more than one-half hour, whether excused or not, will be counted as one or more hours of absence. Absences during any portion of the day will be counted, whether more or less than an hour. All early departures will be counted, even though excused. Except for an occasional tardiness of one-half hour or less which is excused by the school, any absence of less than an hour will be counted as a full hour of absence.

§ 21.4207 Failure of school to meet requirements.

When the Veterans Administration discovers facts which appear to warrant a finding that the school is in violation of specific criteria of 38 U.S.C. chapters 34, 35, or 36, including failure to meet requirements for approval of a course offered to a veteran or eligible person, the facts will be referred to the field station Committee on Educational Allowances.

(a) *Committee on Educational Allowances.* The Committee on Educational Allowances in the field station is authorized to make recommendations on

action to be taken for the purposes of this section, subject to approval by the station head. The Committee will include one member designated by the State approving agency, or in the absence of such designation, a staff employee designated by the station head. The recommendation of the Committee, when approved by the station head, becomes the final administrative decision of the Veterans Administration unless an application for review is filed as provided in paragraph (d) of this section.

(b) *Hearings.* A hearing may be held at the request of the school. No expenses incurred for counsel or witnesses will be paid by the Veterans Administration.

(c) *Referral to Central Office.* If the station head does not approve the recommendation of the Committee on Educational Allowances, the decision will be made by Central Office.

(d) *Request for review.* The school may file an application for review by Central Office of any decision rendered under paragraph (a) of this section. The application must be received in Central Office within 30 days after the date of notice of the decision. See § 21.4208.

(e) *Effective date.* The decision of the station head will be effective as of the date of the decision. A decision rendered under § 21.4208 affirming discontinuance of educational assistance allowance will be effective the date of receipt of the decision in the field station. A decision which reverses the field station's decision will be effective as of the date of the original decision.

(f) *Reapproval of enrollments.* Educational assistance allowance which was finally discontinued by reason of the provisions of this section will not be resumed without prior approval at the level of authority where the final decision was made.

§ 21.4208 Central Office Education and Training Review Panel.

(a) *Purpose.* The panel will receive evidence and hear the testimony of witnesses and the arguments of interested parties regarding matters considered by the field station Committee on Educational Allowances and make recommendations to the Director, Compensation, Pension, and Education Service, in connection with such matters which are before him for final administrative determination under § 21.4202 or § 21.4207.

(b) *Composition of panel.* The panel will consist of one staff employee from the Office of the Director of Compensation, Pension, and Education Service, and two persons who are not employees of the Veterans Administration chosen from a group of consultants selected for that purpose.

(c) *Disposition of matters reviewed by the panel.* The concurrence of the Director with the recommendation of the panel will constitute the final administrative decision of the Veterans Administration. If the Director does not concur with the recommendation of the panel, the final decision will be made by the Chief Benefits Director.

§ 21.4209 Examination of records.

(a) *Availability.* The records and accounts of educational institutions pertaining to veterans and eligible persons enrolled in programs of education or special restorative training under 38 U.S.C. chapters 34 or 35 will be available for examination by duly authorized representatives of the Government (38 U.S.C. 1786).

(b) *Type of records.* Each school will 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 and eligible persons and from other students similarly circumstanced.

(2) Records of previous education or training of veterans and eligible persons at the time of admission as students and records of advance credit, if any, granted by the school at the time of admission, and

(3) Records of the veteran's or eligible person's grades and progress.

(c) *Below college level.* The school having veterans or eligible persons enrolled in a course or courses which do not lead to a standard college degree will 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.

(d) *Nonaccredited courses.* The school having veterans or eligible persons enrolled in nonaccredited courses will 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.* The records and accounts, as described in this section, pertaining to each period of enrollment of a veteran or eligible person, will be kept intact and in good condition at the school for at least 3 years following the termination of such enrollment period. Longer retention will not be required unless a written request is received from the General Accounting Office or the Veterans Administration not later than 30 days prior to the end of the 3-year period.

PROGRAMS OF EDUCATION

§ 21.4230 Requirements.

A program of education will consist of a combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, profes-

sional, or vocational objective (38 U.S.C. 1652(b), 1701(a)(5)).

(a) *Educational.* An educational objective is one that leads to the awarding of a diploma, degree, or certificate which reflects educational attainment.

(b) *Professional or vocational.* 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.

(c) *Selection; chapter 34.* A program of education under chapter 34 selected by an eligible veteran will be approved if it meets the requirements of paragraph (a) or (b) of this section and the veteran is not already qualified for the objective for which the program of education is offered (38 U.S.C. 1670).

(d) *Provisional; chapter 35.* When application for educational assistance under chapter 35 is approved provisionally the eligible person and, if a minor, the parent or guardian also will be informed of the need to develop a program of education consistent with paragraphs (a) and (b) of this section (38 U.S.C. 1713, 1720).

§ 21.4231 Educational plan; 38 U.S.C. chapter 35.

(a) During or subsequent to counseling the eligible person (with concurrence of the parent or guardian, if a minor, and with the assistance of the counselor, if desired), will prepare an educational plan on a prescribed form which will be signed and treated as an integral part of the application. The educational plan will show the objective and program selected, the school where the program will be pursued and the estimated cost for tuition and fees.

(b) Final approval of the educational plan will be given when it is determined that:

(1) The eligible person is not already qualified for the objective for which the plan is prepared.

(2) The educational plan is consistent with Veterans Administration regulations on providing a program of education and does not include any courses which are precluded under 38 U.S.C. chapter 36 (38 U.S.C. 1720).

§ 21.4232 Specialized vocational training; 38 U.S.C. chapter 35.

(a) A program consisting of a specialized course of vocational training may be provided to an eligible person who has passed his 14th birthday, who is not in need of special restorative training and who requires such a program because of a mental or physical handicap (38 U.S.C. 1737). The Vocational Rehabilitation Board will determine whether such a course is in the best interest of the eligible person. If the determination is in the affirmative the Board will assist in developing the program and a suitable educational plan. If it is determined that such a program is not in the best

interest of the eligible person the application for the program will be denied.

(b) The objective of a program of specialized vocational training will be designated as a vocational objective.

(c) When needed, special assistance will be provided under § 21.4276.

§ 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) *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. 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;

(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 (38 U.S.C. 1682(a)(2) and 1732(b)).

(b) *Concurrent enrollment.* Where a veteran or eligible person cannot successfully schedule his 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 complete program of education or training is not available at the school in which he will pursue the major portion of his program (the primary school), or that it cannot be scheduled successfully within the period in which he plans to complete his program.

(1) Where the standards for measurement of the courses pursued concurrently in the two schools are different, the extent of the course will be determined by converting the measurement of courses in the second school to its equivalent in value to the measurement re-

quired for full-time courses in the primary institution; e.g., school courses on a clock-hour basis converted to its equivalent in value to semester hours of credit will be 0.56 semester credits (14÷30), as applicable, for each clock hour of attendance.

(2) 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.

(c) *Television*—(1) *Open circuit telecast*. An undergraduate program may be pursued in part by open circuit telecast when:

(i) The veteran or eligible person is enrolled as a resident student in a program leading to a standard college degree.

(ii) The subjects taken by television are integral parts of his degree program.

(iii) A major portion of the credit hours for which the veteran or eligible person is enrolled during any semester or quarter is offered through conventional classroom and/or laboratory sessions. In no instance may a veteran or eligible person include in his program during any one semester or quarter more than 6 credit hours of open circuit telecast instruction for the purpose of computing the rate of educational assistance allowance. Under these circumstances, a veteran or eligible person may pursue 8 or more credit hours during any one term through regular classroom and/or laboratory instruction and 6 credit hours by open circuit telecast for a full-time resident training load.

(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.

§ 21.4234 Change of program.

A request for a change of program will be made by a veteran or eligible person on the prescribed form. The request of the eligible person will have the concurrence of his parent or guardian, where required. Not more than two changes of program may be approved.

(a) *Definition*. A change of program consists of a change in the educational, professional or vocational objective for which the veteran or eligible person entered training and a like change in the type of courses required to attain a new objective.

(b) *Chapter 34*. The veteran may make one optional change of program if his previous course was not interrupted or discontinued due to his own misconduct, neglect or lack of application. He may make a second change or an initial change after interruption or discontinuance due to his own misconduct, neglect or lack of application if it is found that:

(1) The program of education which the veteran proposes to pursue is suitable to his aptitudes, interests, and abilities; and

(2) In any instance where the veteran has interrupted, or failed to progress in, his program due to his own misconduct,

neglect or lack of application, there exists a reasonable likelihood with respect to the program which the veteran proposes to pursue that there will not be a recurrence of such an interruption or failure to progress (38 U.S.C. 1672).

(c) *Chapter 35*. After further counseling one change will be approved and a second change may be approved, if the criteria of paragraph (b) (1) and (2) of this section are satisfied. The approval of such change will also be subject to the requirement that the educational plan for the new program must meet the criteria applicable to final approval of an original application. See §§ 21.4230 and 21.4231 (38 U.S.C. 1722).

(d) *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 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 pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree.

COURSES

§ 21.4250 Approval of courses.

(a) *General*. A course of education offered by a school must be approved by the State approving agency for the State in which the school is located, or, where appropriate, by the Veterans Administration.

(1) A course approved under chapter 36 shall be deemed approved for purposes of chapters 34 and 35.

(2) Any course which was approved under chapter 33 (as in effect before February 1, 1965), or under chapter 35 prior to 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 chapter 36 (38 U.S.C. 1770).

(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*. Each State approving agency will furnish to the Veterans Administration a current list of schools specifying courses which it has approved, and will furnish such other

information as it and the Veterans Administration may determine to be necessary. See § 21.4258.

(2) *Notice of disapproval*. Each State approving agency will notify the Veterans Administration of the disapproval of any course previously approved and will set forth the reasons for such disapproval. See § 21.4259 (38 U.S.C. 1772 (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 Veterans Administration.

(c) *Veterans Administration approval*. The Director, Compensation, Pension, and Education Service may approve:

(1) Special restorative training in excess of 9 months, to overcome or lessen the effects of a physical or mental disability so as to enable an eligible person to pursue a program of education under chapter 35;

(2) A course of education offered by an agency of the Federal government authorized under other laws to offer such courses;

(3) A course of education to be pursued under 38 U.S.C. chapter 34 or 35 offered by a school located in the Canal Zone, Guam, or Samoa;

(4) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 38 U.S.C. chapter 34 offered by an institution of higher learning not located in a State (38 U.S.C. 1676); and

(5) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36 (38 U.S.C. 1772(b)).

§ 21.4251 Period of operation of course.

(a) *General*. A course offered by a school will be appropriate for the enrollment of a veteran or eligible person only if it has been in operation for 2 years or more immediately prior to the date of enrollment of such person, except that this provision does not apply to:

(1) Any course to be pursued in a public or other tax-supported educational institution;

(2) Any course which is similar in character to instruction previously offered by the school for more than 2 years;

(3) Any course which has been offered by a school for a period of more than 2 years, notwithstanding that the school has moved to another location within the same general locality; or

(4) Any course which is offered by a nonprofit school of college level and which is recognized for credit toward a standard college degree (38 U.S.C. 1675, 1725).

(b) *Operation for 2 years*. A course is considered to have been in operation for 2 years when it has been given continuously for 24 calendar months inclusive of reasonable vacation and holiday periods. Where courses are only offered on an ordinary school-year basis (approximately 9 months), 2 ordinary school years in the 24 calendar months will constitute a 2-year period. Where short

courses of less than an ordinary school year are offered on a regular cycle each calendar year, two cycles of such operation will constitute the 2-year period.

(c) *Course similar in character.* A course will be considered similar in character if it provides training for the same general objective and involves the same or related instructional processes, tools, and material as a course previously furnished by the school for a period of at least 2 years. When the State approving agency approves a new course which has not been in operation for a period of at least 2 years, as similar in character to a course which has been in operation for at least 2 years, the State will furnish the Veterans Administration with a copy of the approval and the basis for its view as to the similarity in character.

(d) *Move to new location.* A school will be considered to have moved to another location in the same general locality when the new location is within normal commuting distance of the original location, and remains essentially the same as to faculty and student body and offers the same courses.

(e) *Change of ownership or management.* Where a school has been in operation for 2 years or more and changes ownership or management, and remains essentially the same as to faculty, student body and courses offered, the school will not again be subject to the 2-year limitation.

(f) *Subsidiary branch or extension.* The 2-year period of operation requirement will apply to courses offered by a subsidiary branch or extension of a school. Additional facilities acquired by a school in the same general locality because of space limitations will not be considered to be a subsidiary branch or extension and will not be subject to the 2-year limitation if all of the following conditions are met:

(1) The school has been in operation for a period of 2 years or more;

(2) The school has reached the limit of its enrollment capacity in its present facilities;

(3) The courses to be offered at the additional facilities are the same as those given in the present facilities; and

(4) The additional facilities are within normal commuting distance of the present facilities.

§ 21.4252 Courses precluded.

(a) *Bartending, dancing, and personality development.* Enrollment will not be approved in any bartending, dancing, or personality development course, except where dancing is included in a physical education course in an institution of higher learning.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character. The courses identified in subparagraphs (1), (2), and (3) of this paragraph, 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

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 Veterans Administration determines to be avocational or recreational (38 U.S.C. 1673(a), 1723(a)).

(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 present or contemplated business or occupation.

(c) *Flight training.* Enrollment in a course of flight training will not be approved except one given by an institution of higher learning for credit toward the standard collegiate degree for which the veteran or eligible person is enrolled (38 U.S.C. 1673(b), 1723(b)).

(d) *Apprenticeship or other training on the job, on-farm and courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.* Enrollment in such courses will not be approved for eligible persons under chapter 35. See § 21.4256 as to chapter 34.

(f) *Courses on secondary level; chapter 35.* (1) A curriculum offered by a public or private school at the secondary level leading to the completion of the eligible person's regular secondary school education, that is, leading to a high school diploma or its equivalent, may not be pursued as a program of education or as a part of a course of education under chapter 35.

(2) Where the eligible person has ended his secondary school education, by completion or otherwise, after having passed the age of compulsory school attendance, he may pursue a specialized vocational program of education in a school at the secondary level if such program leads to a bona fide vocational objective. Such a program may be pursued if it is deemed adequate to prepare graduates to enter directly into employment in the occupation or vocation which the eligible person expects to enter.

(3) Enrollment in a specialized vocational program will not be approved where the program, although containing essential elements of vocational instruction, includes a heavy weighting of subjects of secondary level thereby requiring for completion a total number of instructional hours approximately equal to that required for high school graduation (38 U.S.C. 1723(d)).

§ 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.

(2) Credit for such course is approved by the State department of education

for credit toward a high school diploma (chapter 34 only).

(3) The course is conducted under 20 U.S.C. 11-28 (vocational education).

(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree (38 U.S.C. 1775).

(b) *Course objective.* Any curriculum offered by a college or university 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. Approval of the individual subjects, required or elective, which are designated as a part of the curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum.

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Commissioner of Education as required by 38 U.S.C. 1775(a). The State approving agencies may utilize the accreditation of such accrediting agencies or associations for approval of the courses specifically accredited and approved by such 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 and will submit copies of its catalog or bulletin, together with such other information as will make it possible for the State approving agency to determine whether:

(1) Adequate records are kept by the school to show the progress of each veteran or eligible person; and

(2) 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 by the school for previous education and training, with the training period shortened proportionately, and the person and the Veterans Administration so notified (38 U.S.C. 1775(b)).

(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 Veterans Administration as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized accrediting agency listed by the Commissioner of Education; and

(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.

(f) *Business schools.* Any 1- or 2-year business course in a business school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The school offering such business course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field of business as distinguished from other fields (this excludes courses such as radio and television service or repair, medical laboratory or X-ray, etc.); and

(3) The course leads to a vocational objective in the field of business; and

(4) The course is offered in residence at the school.

§ 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. 1776(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 (38 U.S.C. 1776(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 Veterans Administration 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's administrators, directors, owners, and instructors are of good reputation and character.

(13) The school has and maintains a policy for the refund of the unused portion of tuition, fees, and other charges in the event the veteran or eligible person fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion. Such policy must provide that the amount charged to the veteran or eligible person for a portion of the course shall 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 its total length. See § 21.4255.

(14) Such additional criteria as may be deemed necessary by the State approving agency (38 U.S.C. 1776(c)).

§ 21.4255 Refund policy; nonaccredited courses.

A refund policy will meet 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 when the school makes provision for refund within the following limitations:

(a) *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.

(b) *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.

(c) *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.

(d) *Books, supplies and equipment.* Where the veteran or eligible person purchases his books, supplies, and equipment from a bookstore or other source, and the cost of such items is separate and independent from the charge made by the school for tuition and fees, he may retain or dispose of such items at his own discretion. Where the school furnishes the books, supplies, and equipment, with the cost thereof included in the total charge payable to the school for the course, and the veteran or eligible person withdraws or is discontinued prior to the completion of the course, refund will be made in full for the amount of the charge for the unissued books, supplies, and equipment. Issued items may be disposed of at the discretion of the veteran or eligible person.

(e) *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 section, such established policy will be applicable. Otherwise, the school will refund 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.

§ 21.4256 Correspondence courses; 38 U.S.C. chapter 34.

(a) A school desiring to enroll veterans under chapter 34 for correspondence courses may have such courses approved when the courses and the school meet the requirements of § 21.4253 or § 21.4254, as applicable, and when its application demonstrates that the course is satisfactory in all elements.

(b) Whenever the State approving agency approves a correspondence course for training of veterans under chapter 34, it shall immediately notify the Veterans Administration, identifying the school, the course or courses approved, and the educational or vocational objective of each approved course.

§ 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) The State approving agency, upon determining that a school has complied with all the requirements for approval will notify the school by letter setting forth the courses which have been approved, and will furnish to the Veterans Administration an official copy of the letter and attachments and any subsequent amendments. The letter of approval for each school will be accompanied by a copy of the catalog or bulletin of the school, as approved by the State approving agency, and will contain the following information:

- (1) Date of letter and effective date of approval of courses;
- (2) Proper address and name of each school;
- (3) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin published by the school;
- (4) Name of each course approved;
- (5) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;
- (6) Signature of responsible official of State approving agency; and
- (7) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency (38 U.S.C. 1777).

§ 21.4259 Disapproval.

(a) Any course which, after being approved, fails to meet any of the requirements for approval will be immediately disapproved by the appropriate State approving agency. Upon disapproval, the State approving agency will notify the school by certified or registered letter with a return receipt secured (38 U.S.C. 1778). 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 the Veterans Administration of each course which it has disapproved.

(c) The Veterans Administration will disapprove courses under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See § 21.4150(c).

(d) The Veterans Administration will immediately notify the State approving agency in each case of Veterans Administration disapproval of any school under chapter 31 (38 U.S.C. 1778).

§ 21.4260 Courses in foreign countries.

(a) *Chapter 34.* Enrollment in a course at a school not located in a State may be approved when such course is pursued at an institution of higher learning and is approved in accordance with § 21.4250(c). The educational assistance allowance to a veteran pursuing a course in a foreign country will be denied or discontinued when it is found that

such enrollment is not for the best interests of the veteran or the Government (38 U.S.C. 1676).

(b) *Chapter 35.* Enrollment in a course at a school not located in a State or in the Republic of the Philippines may be approved when all of the following conditions are met:

(1) The subjects to be taken at the foreign school are an integral part of and fully creditable toward the satisfactory completion of an approved course in which the veteran or eligible person is enrolled in an institution of higher learning (hereafter in this paragraph referred to as his principal school) which is located in a State or in the Republic of the Philippines.

(2) The tuition and fees for attendance at such foreign school are paid for by the principal school, and

(3) The principal school agrees to assume the responsibility for submitting to the Veterans Administration required enrollment certificates and monthly certifications of training as to attendance, conduct, and progress. An application for a program of education or for a change of program which includes education in a foreign school will not be given final approval until the applicant has been provided educational and vocational counseling by a Veterans Administration counseling service in a State or the Republic of the Philippines (38 U.S.C. 1723(c)).

ASSESSMENT AND PURSUIT OF COURSE

§ 21.4270 Measurement of courses.

Clock hours mentioned in this table mean clock hours per week.

Courses		Full time	$\frac{3}{4}$ time	$\frac{1}{2}$ time
Kind of school	Kind of course			
(a) Trade or technical (includes college courses not leading to a standard degree).	Shop practice an integral part of course.	30 clock hours attendance with not more than 2½ hours rest period allowance.	22 to 30 clock hours attendance with not more than 2 hours rest period allowance.	15 to 22 clock hours attendance with not more than 1½ hours rest period allowance.
	Theory and class instruction predominates.	25 clock hours net instruction.	18 to 25 clock hours net instruction.	12 to 18 clock hours net instruction.
(b) High school.	High school diploma or equivalent. ¹	25 clock hours net instruction.	18 to 25 clock hours net instruction.	12 to 18 clock hours net instruction.
(c) College undergraduate.	Standard collegiate courses including cooperative. ²	14 semester hours or equivalent.	10 to 14 semester hours or equivalent.	7 to 10 semester hours or equivalent.
(d) Collegiate graduate.	Standard collegiate graduate courses including law.	As in paragraph (c) of this section or certified by responsible official of school.	As in paragraph (c) of this section or certified by responsible official of school.	As in paragraph (c) of this section or as certified by responsible official of school.
(e) Professional (nonaccredited).	Law only. ³	12 class sessions per week.	9 to 12 class sessions per week.	6 to 9 class sessions per week.
(f) Professional (accredited and equivalent).	Internships and residencies: medical, dental, osteopathic.	As established by accrediting association.	Full time only.	
	Nursing, X-ray medical technology, medical records librarian, physical therapy.	25 clock hours or 14 semester hours, as appropriate.	18 to 25 clock hours or 10 to 14 semester hours, as appropriate.	12 to 18 clock hours or 7 to 10 semester hours, as appropriate.

¹ High school diploma courses available only under chapter 34.

² Cooperative course may be pursued on full time basis only.

³ 12 class sessions per week will consist of at least 600 minutes; 9 class sessions will consist of at least 450 minutes; and 6 class sessions will consist of at least 300 minutes. These required minutes pertain to net instruction, independent of supervised study, class breaks, or rest periods.

§ 21.4271 Trade or technical; high schools.

(a) *Shop practice predominates.* Trade or technical courses, which include shop practice as an integral part of the course, will be measured on a basis of clock hours per week. This includes such courses under the supervision of a college or university where credit is not given towards a standard college degree.

(b) *Theoretical or classroom instruction predominates.* A technical course in which theoretical or classroom instruction constitutes more than 50 percent of the required hours per week, will be measured on a clock-hour basis. This includes such courses given by a college or university for which credit is not granted towards a standard college degree.

(c) *High schools; chapter 34.* Courses offered at the secondary level which lead to a high school diploma or the equivalent will be measured on the basis of clock hours of instruction per week. Enrollment in such courses will not be approved for eligible persons under chapter 35.

§ 21.4272 Collegiate undergraduate; credit-hour basis.

An undergraduate course in an institution of higher learning will be measured on a credit-hour basis provided all the conditions under paragraph (a), (b), or (c) of this section are met:

(a) The course is offered by a college or university which is a member of a nationally recognized accrediting association, and

(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 course.

(b) The course is offered by a college or university which is not a member of a nationally recognized accrediting association, and

(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, and

(3) The president of the college or university will certify that three institutions identified by him as members of a nationally recognized accrediting association will recognize credit received on transfer at full value; i.e., credit hour for credit hour, and that at least 40 percent of the subjects within each curriculum, desired to be measured on a credit-hour basis, are acceptable in partial fulfillment of the requirements for a baccalaureate or higher degree. In lieu of such certification the school may furnish letters from three schools that are members of nationally recognized accrediting associations certifying that credits are received on transfer at full value, and that at least 40 percent of the subjects within each curriculum, desired to be measured on a credit-hour basis, are acceptable in partial fulfillment of the requirements for a baccalaureate or higher degree.

(c) The course is offered by either a member or nonmember of a nationally recognized accrediting association, and

(1) The course is offered on a semester- or quarter-hour basis, and

(2) The course does not lead to a degree, and

(3) The course requires not less than high school graduation or equivalent for admission, and

(4) A minimum of two full-time academic years is required for completion of the course, and

(5) If the school is a member of a nationally recognized accrediting association, and certifies that credit for at least 40 percent of the subjects within the curriculum, desired to be measured on a credit-hour basis, is granted upon transfer to the element of the school which offers a baccalaureate or higher degree, and credit is awarded at full value; i.e., credit hour for credit hour toward partial fulfillment of the requirements for a baccalaureate or higher degree, or

(6) If the school is not a member of a nationally recognized accrediting association, and it furnishes proper certification as provided in paragraph (b) of this section.

(d) Where the course is of less than a regular semester, term, or quarter duration, it will be measured as full, three-fourths, or one-half time according to the certification of the school. In making such certification, the school will state the number of credit hours for which the veteran or eligible person is registered, including the credit hour equivalent of noncredit courses, if any, required by the school and will be required to observe the following criteria:

(1) Full time—the number of credit hours for which the veteran or eligible person must be registered in order to be considered pursuing full-time training is that number which requires at least 14 standard class sessions of attendance per week or the equivalent in laboratory or fieldwork, research, or other types of prescribed activity. For example, an eligible person pursuing a short, summer session requiring attendance at 14 standard class sessions per week will be considered to be in full-time training, although because of the very short duration of the course he may be registered for only 3 credit hours.

(2) Three-fourths time—less than 14 class sessions of attendance per week or equivalent but not less than 10.

(3) One-half time—less than 10 class sessions of attendance per week or equivalent but not less than 7.

(e) Where the course is acceptable for credit but credit may not be awarded to the veteran or eligible person because he has not met college entrance requirements or for some other valid reason, the course will be measured the same as if it were pursued for credit provided the eligible person performs all of the work prescribed for other students who are enrolled for credit.

(f) Where the school requires the veteran or eligible person to pursue non-credit deficiency courses in order to meet certain scholastic or entrance require-

ments, the school will certify the credit-hour equivalent of such noncredit deficiency courses in addition to the credit hours for which the veteran or eligible person is enrolled. The measurement criteria of § 21.4270 will be applied, with the following modifications:

(1) Full time—12 hours credit plus the noncredit deficiency courses.

(2) Three-fourths time—less than 12 hours credit but not less than 9 hours credit, plus the noncredit deficiency courses.

(3) One-half time—less than 9 hours credit but not less than 6 hours credit in addition to the noncredit deficiency courses.

(g) Courses for which credit is not given toward a standard college degree will be evaluated on a clock-hour basis. See § 21.4271(b).

§ 21.4273 Collegiate graduate.

(a) *In residence.* An accredited graduate or advanced professional course pursued in residence at an institution of higher learning will be assessed 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-fourths, one-half or less than one-half time.

(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 time or less than one-half time, and the activity will be assessed by the Veterans Administration 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.* Undergraduate courses required by the school will be assessed in terms of credit hours, even though the veteran or eligible person is enrolled as a graduate student. If the veteran or eligible person is taking both graduate and undergraduate courses, the school will give the credit-hour equivalent of the graduate work so that this equivalent may be combined with the undergraduate credits to determine the extent of training.

(d) *Law.* A law course pursued in an accredited law school for the LL.B. degree where, as is usual, the units of credit are of greater than the standard units of credit for courses leading to undergraduate degrees in other schools will be assessed as in paragraph (a) of this section, except that an accredited 4-year night law course unless approved as a full-time course pursuant to the stand-

ards established by the American Bar Association will be considered part time and will be measured as not more than three-fourths time.

§ 21.4274 Professional; nonaccredited.

(a) A law course pursued in a non-accredited school will be assessed on a clock-hour basis, except that if the school requires for admission to the law course completion of college work consisting of not less than 90 standard semester units of credit or the equivalent in quarter units of credit, and requires for the awarding of the law degree that its students pursue a daytime course of not less than 3 years duration if they devote substantially all of their working time to their course of studies, or if pursued in the evening the school requires not less than 4 school years of attendance, the course will be assessed on the basis of sessions of attendance per week.

(b) In no case will a nonaccredited night law course be measured at more than three-fourths time.

§ 21.4275 Professional; accredited.

Medical, osteopathic and dental internships and residencies will be recognized as full-time institutional courses when accredited and approved by the appropriate accrediting agency as leading to certification for a recognized professional objective.

(a) Medical internship courses will be accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association and for such length as the council has approved for the particular internship course at the particular hospital.

(b) Osteopathic internship courses will be accredited and approved by the American Osteopathic Association and for such length as the association has approved for each particular internship at the particular hospital.

(c) Dental internship courses will be accredited and approved by the Council on Dental Education of the American Dental Association as an integral part of an approved course leading to certification by a Dental Specialty Board recognized by the American Dental Association.

(d) No other medical, dental, or osteopathic internship courses will be recognized, since they are not recognized by the profession as qualifying a person for the practice of the profession.

(e) Medical residency courses will be recognized when accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association as standard residencies leading to a certification by a Specialty Board. For those residencies where there is no Specialty Board, there must be certification by a hospital approved by the Council on Medical Education and Hospitals of the American Medical Association. The length of a residency course is not to exceed the number of months prescribed for the residency training by the appropriate Specialty Board or by the Council on Medical Education and Hospitals of the American Medical Association.

(f) Osteopathic residency courses will be accredited and approved by the American Osteopathic Association for such length as the appropriate Specialty Board of the Association has approved for each particular residency course.

(g) Dental residency courses will be recognized when they are accredited and approved by the Council on Dental Education of the American Dental Association as standard residencies leading to certification by a Dental Specialty Board, and the length of the course is not in excess of the number of months prescribed for the residency training by the appropriate Specialty Board or the Council on Dental Education of the American Dental Association.

(h) No course of residency training will be approved to include a period of practice, following completion of a required residency, even though such practice is required or accepted by a Specialty Board to fulfill board requirements. Further, where a veteran or eligible person after completing an internship prerequisite to residency training has pursued any additional training, whether through internship, fellowship, or other graduate or postgraduate study that is creditable toward residency requirements, the residency course must be proportionately shortened.

(i) No other medical, dental, or osteopathic residency course will be recognized since they are not recognized by the accrediting agency.

(j) Registered nursing and registered professional nursing courses (Accredited or Accepted as Equivalent).

(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 courses pursued in a school accredited by a nationally recognized accrediting agency. A nonaccredited course will be considered appropriate if it meets the requirements of the licensing body of the State in which the school is located.

(2) The hospital or fieldwork phase of a course leading to a degree of Bachelor of Science in nursing, or a comparable degree, 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 granting of the degree, the student remains enrolled in the school during the entire period, and the training is under the direction and supervision of the school. Where measurement of the hospital training segment on a credit-hour basis would not reflect the full-time status of the student, enrollment certifications submitted by the school should include appropriate entries to show clock hours in lieu of credit hours during the hospital training periods.

(3) A veteran or eligible person may not enroll in any other course for the

objective of registered or registered professional nurse.

(k) Practical nursing courses (accredited or accepted as equivalent).

(1) 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 in an affiliated or cooperating hospital and the student is enrolled in and supervised by the school during the period of such clinical training. For the academic portion of the course, measurement will be semester hours of credit or clock hours of required attendance per week, whichever is appropriate. The clinical training will be measured in clock hours of required attendance per week.

(2) Enrollment in courses for the objective of nurse's aid will not be authorized.

(l) X-ray technician, medical technician, medical records librarian and physical therapist courses. X-ray technician, medical technician, medical records librarian, and physical therapist courses will be assessed as follows:

(1) Where such courses are offered in hospitals and the courses are accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association, they will be considered full-time institutional training.

(2) Where such courses are offered in hospitals, clinics, or laboratories and are not accredited and approved by the Council on Medical Education and Hospitals of the American Medical Association, they will be considered on-job training and not permitted under chapter 34 or 35.

(3) Where such courses are offered by a school they will be measured in semester hours of credit or clock hours of required attendance per week, whichever is appropriate.

§ 21.4276 Special assistance; 38 U.S.C. chapter 35.

(a) *Need for special assistance.* The assistance of a vocational rehabilitation specialist or of a counselor with assigned vocational rehabilitation specialist duties will be provided in connection with a program of education when it is determined by the Vocational Rehabilitation Board, that although the eligible person is not in need of special restorative training, he will require assistance in order to pursue a program of education successfully because of the handicapping effects of a physical or mental condition, or because of personal adjustment problems. The determination as to need for such assistance will be made by the Vocational Rehabilitation Board upon the basis of information developed in the counseling process, including data and opinions obtained from medical and other specialists as appropriate in the case.

(b) *Factors.* A determination that an eligible person needs such assistance will be made when one or more of the following conditions is found to exist:

(1) The handicapping effects of a physical or mental condition are such that assistance will be required in order for the eligible person to enter and successfully pursue a program of education.

(2) The eligible person has a history of a behavioral pattern which if continued would interfere with or impede his entrance into a pursuit of a program of education.

(c) *Recommendations.* The Vocational Rehabilitation Board will prepare a report as to the need for assistance and the factors taken into account in arriving at the determination. Where an affirmative determination of need is found, the Board will include suggestions and recommendations relative to the nature of the assistance contemplated.

(d) *Duration.* When it is determined by the Vocational Rehabilitation Board that an eligible person needs assistance, the parent or guardian will be informed of the finding and of the underlying reasons. If the parent or guardian concurs in the finding, the assistance will be provided as is indicated until the progress and adjustment of the eligible person in his program of education are such that the assistance is no longer needed.

(e) *Nature of assistance.* Assistance by the vocational rehabilitation specialist will include:

(1) Assisting the eligible person and the school in the implementation of the planned program of education;

(2) Determining the progress of the eligible person through visits at the school as well as through review of records and, when indicated, taking action designed to solve problems which may interfere with satisfactory pursuit of the program of education;

(3) Making referral when indicated and coordinating action with responsible individuals and agencies in order to alleviate or prevent conditions arising which may negatively affect progress;

(4) Referring the case of an eligible person who is receiving assistance to the Vocational Rehabilitation Board when need for special restorative training appears to be for consideration, or the advice and assistance of the Board is needed to resolve difficulties;

(5) Assisting the parent or guardian in locating and arranging for the services of suitable instructors and equipment when the eligible person is homebound.

§ 21.4277 Discontinuance; unsatisfactory progress.

(a) *Satisfactory pursuit of program.* 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 and progress in accordance with the regularly prescribed standards and practices of the institution in which he is enrolled.

(b) *Maintenance of satisfactory conduct and progress.* A program of education will be discontinued where it is established that by reason of the veteran's or eligible person's unsatisfactory conduct or progress he will no longer be re-

tained as a student or would not be readmitted as a student by the school in which he is or was enrolled, unless it is found through further development that the action of the school is of a retaliatory nature (38 U.S.C. 1674 and 1724).

§ 21.4278 Reentrance after discontinuance.

(a) A veteran or eligible person may be reentered following discontinuance because of unsatisfactory conduct or progress only when the following conditions exist:

(1) The cause of the unsatisfactory conduct or progress has been removed, and

(2) It is deemed through counseling that the program which the veteran or eligible person now proposes to pursue is suitable to his aptitudes, interests and abilities.

(b) Reentrance may be for the same program, for a revised program or for an entirely different program depending on the cause of the discontinuance, the removal of that cause, and the determinations arrived at through further counseling (38 U.S.C. 1674 and 1724).

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective March 3, 1966, except §§ 21.131, 21.136, and 21.224 which are effective April 8, 1966, and § 21.3023(c) which is effective June 1, 1966.

By direction of the Administrator.

Approved: April 8, 1966.

[SEAL]

A. H. MONK,

Acting Deputy Administrator.

[F.R. Doc. 66-4908; Filed, May 5, 1966; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Docket No. 1819; Amdt. 39-230]

PART 39—AIRWORTHINESS DIRECTIVES

Martin Models 202, 202A, and 404 Series Airplanes

Amendment 610 (28 F.R. 9593), AD 63-18-4, requires repetitive inspection of the engine mounts and repair or replacement of any parts found cracked on Martin Models 202, 202A, and 404 Series airplanes. Subsequent to the issuance of Amendment 610, the Agency has determined that due to additional cracks being found in service, it is necessary to supersede AD 63-18-4 with a new AD that requires a visual inspection for cracks at 350-hour intervals and an X-ray inspection for cracks and corrosion at 2,500-hour intervals.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

MARTIN. Applies to Models 202, 202A, and 404 Series airplanes.

Compliance required as indicated.

Numerous cracks have been discovered in Martin Models 202 (P/N A10100), 202A (P/N A16647-81), and 404 (P/N 404-5000004, and P/N 404-5000005) aircraft engine mounts. To preclude the possibility of engine loss due to this condition, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, unless already accomplished within the last 250 hours' time in service before the effective date of this AD, and thereafter at intervals not to exceed 350 hours' time in service from the last inspection, visually inspect the engine mount tubular members and welds for cracks, using a glass of at least 10-power or an FAA-approved equivalent inspection.

(b) Within the next 350 hours' time in service after the effective date of this AD, unless already accomplished within the last 2,150 hours' time in service before the effective date of this AD, and thereafter at intervals not to exceed 2,500 hours' time in service from the last inspection, inspect the engine mount tubular members and welds for external and internal cracks and corrosion, using X-ray or an FAA-approved equivalent inspection.

(c) If a crack or corrosion is detected during the inspections required by paragraphs (a) and (b), before further flight repair the defective part in accordance with an FAA-approved repair procedure, or replace the part with a part of the same part number, or an equivalent part approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(d) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This supersedes Amendment 610 (28 F.R. 9593), AD 63-18-4.

This amendment becomes effective May 6, 1966.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423))

Issued in Washington, D.C., on April 29, 1966.

C. W. WALKER,
Acting Director,
Flight Standards Service.

[F.R. Doc. 66-4941; Filed, May 5, 1966; 8:46 a.m.]

[Docket No. 7175; Amdt. 39-231]

PART 39—AIRWORTHINESS DIRECTIVES

Vickers Viscount Models 744, 745D, and 810 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring dye penetrant and radiographic or ultrasonic inspection of the nacelle structure tubes and end fittings and replacement as necessary on Vickers Viscount Models 744,