

income or gain which is tax-exempt for shareholders under these programs.⁴³

In determining mutual fund dividends which qualify for the dividend exclusion, registrant should note Revenue Ruling 80-345 (December 29, 1980).

In regard to the Subchapter M disclosure required in the prospectus by Item 6, if more than 50 percent of registrant's stock is owned by five or fewer persons, the registrant may be a "personal holding company" under the Internal Revenue Code and unable to meet the requirements of Subchapter M so long as that ownership continues. Appropriate disclosure of any adverse tax consequences to the investors as a result of this status is required in the prospectus. The response should summarize registrant's tax status at the time of filing as well as its future intention with respect to qualification under the Code.⁴⁴

If there are any special or unusual tax aspects of the registrant that exist the registrant must describe these fully in response to Item 20.

Guide 31. Financial Statements

The form, content, and presentation of financial statements is discussed in Regulation S-X [17 CFR Part 210].

Guide 32. Yield Quotations of Money Market Funds

For guidance in responding to Item 3(c) and Item 22, the registrant should refer to Investment Company Act Release No. 13049 (February 28, 1983) [48 FR 10297 (March 11, 1983)]; Investment Company Act Release No. 11028 (January 28, 1980) [45 FR 7578 (February 4, 1980)]; and Investment Company Act Release No. 11379 (September 30, 1980) [45 FR 67079 (October 9, 1980)].

Guide 33. The Synopsis

If the registrant determines that inclusion of a synopsis is appropriate because of the length or complexity of the prospectus, that synopsis should be a clear and concise description of the salient features of the offering and the registrant. The information provided in the synopsis need not be set forth in the order or the manner described in this Guide. Further, the information may be presented in a question-and-answer format.

A synopsis provided pursuant to Item 2 of Form N-1A should, in the staff's opinion, include: (i) a brief description of how the registrant proposes to achieve its investment objectives, including identification of the types of securities in which the registrant proposes to invest primarily and a statement as to whether the registrant proposes to operate as a diversified or non-diversified investment company; (ii) a summary of the principal speculative or risk factors associated with investment in the registrant, including factors peculiar to the registrant as well as those generally attendant to investment in an investment company with objectives and policies similar to registrant's; (iii) a statement of the total expenses incurred by the registrant in the previous fiscal year as a percentage of net assets and a statement of any direct charges made by the registrant to shareholder accounts during such fiscal year, if the registrant has had an operating history of at least one full fiscal year. If the registrant does not have an operating history of one full fiscal year, the registrant should include the maximum investment advisory or other asset based fee that may be charged and a list of the other significant types of expenses the registrant expects to incur, including any direct charges to shareholder accounts; and (iv) the nature of the securities being offered.

The synopsis should also: (i) provide the name of the investment adviser, and, if any other person provides services of the type customarily provided by an investment adviser, the identity of such person and the services so provided; (ii) provide a cross-reference to the description in the prospectus of how to purchase the securities being offered; and (iii) provide a cross-reference to the description in the prospectus of how a shareholder may effect redemption and, if applicable, a repurchase transaction.

Finally, the synopsis may include other information, but care should be taken that such additional information does not, either by its nature, quantity, or manner of presentation, impede understanding of the information required to be presented in the prospectus.

[FR Doc. 83-22864 Filed 8-19-83; 8:45 am]

BILLING CODE 8010-0-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 251

Geological and Geophysical Explorations on the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides for monthly, rather than weekly, status reports to be submitted to the Minerals Management Service (MMS) with respect to activities conducted under a permit for geological and geophysical (G&G) exploration for mineral resources or G&G scientific research offshore. The Department of the Interior (DOI) has determined that the submission of these reports on a monthly basis will be adequate to meet the purposes of the OCS Lands Act (OCSLA) and will significantly reduce the burden imposed on those permittees required to submit the reports.

EFFECTIVE DATE: September 21, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12291 (issued February 17, 1981) directed all executive branch Agencies to "initiate reviews of currently effective rules in accordance with the purposes" of that Order (E.O. 12291, § 3(i)). One stated purpose of that Order is "to reduce the burdens of existing . . . regulations" (E.O. 12291, preamble).

The MMS identified 30 CFR 251.7-2 as a regulation which warrants revision under the criteria of E.O. 12291. That section required the weekly submission of status reports with respect to all activities conducted under a permit for G&G exploration offshore.

On January 10, 1983 (48 FR 1083), MMS published a rulemaking document that proposed to reduce from weekly to monthly the frequency of the reports required by 30 CFR 251.7-2. The public comment period on the proposal expired on February 9, 1983.

⁴³ Id.

⁴⁴ Investment Company Act Release No. 7221, *supra*.

Public Comments

A total of 16 comments was submitted in response to the proposed rule. All were from industry or trade organizations, and all expressed support for the rule as it was proposed.

One commenter suggested that circumstances occasionally arise which warrant a period even longer than 1 month between progress reports. For example, where a G&G expedition may take longer than 1 month, this commenter contended that it would be appropriate to require progress reports on a "cruise" basis rather than monthly.

Specifically, this commenter recommended that we revise 30 CFR 251.7-2 to read:

Each permittee shall submit status reports on a monthly basis, or otherwise on a less frequent basis requested by the permittee and approved by the Director, in a manner approved or prescribed by the Director.

The MMS disagrees with the recommendation that an exemption from the monthly requirement should be incorporated into the regulation. The example cited by the commenter can be addressed by means of the discretion that already exists in 30 CFR 251.7-2. In a situation where it is likely that a G&G vessel will be at sea for a period longer than 1 month, the Director may "approve or prescribe" that the submission of progress reports required, while the expedition is ongoing, may be made by radio telephone, thus obviating the need to return to shore for the sole purpose of submitting a report. Moreover, MMS has determined that the requirement for monthly progress reports represents the minimum burden that can be imposed on permittees consistently with the regulatory responsibilities of MMS.

Two commenters expressed concern that a reduced frequency of progress reports might jeopardize the competitive position of participants in continental offshore stratigraphic test (COST) wells, i.e., wells drilled for the sole purpose of gathering basic data concerning the rocks in the subsurface. Since the stakes involved in these COST wells are very high, the regulations (at 30 CFR 251.6-3) impose a 300 percent penalty on late participants who become involved in a COST well operation after a significant show is encountered. The commenters were concerned that reducing the frequency of progress reports from weekly to monthly might increase the risk that confidential information will leak to competitors who might elect to participate while avoiding the 300 percent late penalty. These commenters recommended that the release of a "public notice announcing a significant hydrocarbon occurrence" (the time after

which participation results in the 300 percent late penalty imposed by 30 CFR 251.6-3) should be made retroactive to the date on which MMS was informed of a show.

While MMS agrees that the concerns of these commenters maybe well founded, the underlying problem is unrelated to this rulemaking. Independent of the requirement for monthly progress reports in 30 CFR 251.7-2, 30 CFR 251.3-5(b)(1) provides that any operator under a G&G permit shall immediately report to the director when G&G activities detect hydrocarbon occurrences. This requirement is not affected by the submission of the progress reports required by 30 CFR 251.7-2, whether on a weekly or monthly basis. Rather, the problem identified by these commenters appears to stem from the delay that occasionally occurs in issuing a public announcement after MMS is notified of a show. The MMS will examine this issue as to whether an administrative or regulatory adjustment to 30 CFR 251.6-3 is necessary or desirable. In the meantime, MMS will comply with the requirement of 30 CFR 251.14-1(c)(1) that the Director announce significant hydrocarbon occurrences "in a form and manner that will further the national interest without unduly damaging the competitive position of those conducting the drilling."

The MMS has determined that the submission of monthly, rather than weekly, reports will be adequate to meet the purposes for which the information is used. The MMS has further determined that such a reduction in frequency will significantly reduce the regulatory burden imposed on those permittees required to comply with 30 CFR 251.7-2. Thus, this revision meets the requirement of the OCSLA, is consistent with the purpose of E.O. 12291 (cited above), and furthers the Secretary of the Interior's regulatory reform effort.

The DOI has determined that this document is not a major rule under E.O. 12291 and certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule is not likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs to consumers or others, or significant adverse effects.

Paperwork Reduction Act

The information collection requirements contained 30 CFR 251.7 have been approved by the Office of Management and Budget under 44 U.S.C.

3504(h) assigned clearance number 1010-0036.

Drafting Information:

This document was drafted by Neil Stoloff, Offshore Rules and Operations Division, Minerals Management Service.

List of Subject in 30 CFR Part 251

Continental Shelf, Freedom of information, Public lands—mineral resources, Reporting and recordkeeping requirements, Science and technology.

Dated: June 22, 1983.

William P. Pendley,

Assistant Secretary of the Interior.

PART 251—[AMENDED]

For the reasons set forth above, 30 CFR Part 251 is amended as shown:

1. A new paragraph (b) is added to § 251.0 as follows:

§ 251.0 Authority for information collection.

(b) The information collection requirement contained in 251.7-2 has been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1010-0036. The information is being collected and will be used to monitor the progress of activities carried out under an offshore permit. The obligation to respond is mandatory.

2. Section 251.7-2 is revised to read as follows:

§ 251.7-2 Progress report on activities conducted under a permit.

Each permittee shall submit status reports on a monthly basis in a manner approved or prescribed by the Director. The shall include a daily log of operations.

[FR Doc. 83-23008 Filed 8-19-83; 8:45 am]

BILLING CODE 4310-MR-M

VETERANS ADMINISTRATION

38 CFR Part 21

Education Benefits; Implementing Legislation

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The following regulatory provisions implement those provisions of the Veterans' Rehabilitation and Education Amendments of 1980 which affect people receiving educational assistance under chapters 34, 35, and 36, title 38, United States Code; revise the method of making charges against the entitlement of a veteran or eligible person; define independent study; and make other technical changes.

The amendments implementing the Veterans' Rehabilitation and Education Amendments of 1980 provide for increases in monthly rates and other significant changes in the VA (Veterans Administration) educational assistance programs. Some of the changes are liberalizing. Some are more restrictive. Others are minor or technical.

Some of the provisions of the Veterans' Rehabilitation and Education Amendments of 1980 have been superseded by later legislation. These changes include provisions concerning incarcerated veterans and eligible persons, the reimbursement percentage for veterans and eligible persons pursuing correspondence courses and the percentage of vocational course graduates who have found employment. However, decisions made by VA employees concerning matters which arose after the applicable effective date of enactment of the Veterans' Rehabilitation and Education Amendments provisions, and before the subsequent enactment of amendatory legislation require appropriate regulations. Therefore, these regulations are still required, and are made final. Revised regulations to implement the later legislation will be proposed shortly.

EFFECTIVE DATES: In keeping with Pub. L. 96-466, the amendments to the following sections are effective October 1, 1980: §§ 21.1032 (d), 21.1041 (a), 21.1045 (a), (b), (d) and (e), 21.3032(c), 21.3300 (a) and (b), 21.3301 (a), (c) and (d), 21.3302, 21.3303, 21.3304, 21.3305, 21.3306, 21.3307, 21.3333 (a)(1), (b)(1) and (3) and (c), 21.4009(a), 21.4020, 21.4022, 21.4025, 21.4102, 21.4105(b), 21.4130 (a) and (c), 21.4131 (b), (h) and (i), 21.4135, 21.4136 (a)(1), (h), (j), (l), (m), (n), (o), (p), (q), (r), (s) and (t), 21.4137 (f), (j), (k), (l), (m), (n) and (o), 21.4138, 21.4140, 21.4200 (g), (h), (n), (o), (p), (q) and (r), 21.4201 (a), (c), (d), (e), (f) and (g), 21.4203(a), 21.4206, 21.4231, 21.4233, 21.4235, 21.4236(b), 21.4237 (b) and (d), 21.4250, 21.4251(a), 21.4252(g), 21.4260, 21.4263, 21.4270, 21.4272, 21.4277, 21.4280, 21.4501, 21.4503(b) (3), (4) and (5) and 21.4504(a).

The portions of the following regulations pertaining to the first rate increase are also effective October 1, 1980: §§ 21.1041(d) (2), 21.1045(g), 21.3049(c), 21.3300(c), 21.4136(c), 21.4137(a), 21.4253(c)(3), 21.4236 (c) and (d), 21.4279 and 21.4503(b)(2).

The cancellation of §§ 21.4235(j) and 21.4251(g) also is effective October 1, 1980.

The amendment to § 21.3333(a)(2) is effective January 1, 1981. Furthermore, the portions of the following regulations which pertain to the second rate

increase are effective January 1, 1981.

§§ 21.1041(d)(2), 21.1045(g), 21.3049(c), 21.3300(c), 21.3333 (a)(2), (b)(2), 21.4136 (a)(2) and (c), 21.4137(a), 21.4153(c)(3), 21.4236 (c) and (d), 21.4279 and 21.4503(b)(2).

Amendments which are not based upon Pub. L. 96-466 are effective August 1, 1983. These include amendments to §§ 21.1030, 21.1031, 21.1032 Introduction, (b), (c), 21.1041 (b) and (c), 21.1043, 21.1045 (c), (f), (h), (i), (j) and (k), 21.3032(b), 21.3300(d), 21.3301(b), 21.4001, 21.4002(a), 21.4006, 21.4007, 21.4008, 21.4009(b), 21.4105(a), 21.4230 (b), (d), (e), and (f), 21.4131(g), 21.4139, 21.4145, 21.4153 (a), (b), (c)(1), (2) and (4), (d), (e), (f) and (g), 21.4154, 21.4200 (s), (t) and (u), 21.4201(b), 21.4202, 21.4203(b), 21.4205, 21.4207, 21.4208, 21.4209, 21.4232, 21.4236(a), 21.4237(e), 21.4251 (c), (d), (f) and (g), 21.4252(b), 21.4253(c), 21.4500 (d), (e), (f) and (h), 21.4502, 21.4503(b)(e), 21.4504(b) and 21.4506

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On pages 46305 through 49335 of the Federal Register of October 18, 1982 there was published a notice of intent to amend part 21 to implement the provisions of the Veterans' Rehabilitation and Education Amendments of 1980.

Interested people were given 60 days to submit comments, suggestions or objections. The Veterans Administration received eleven letters containing many comments. Three letters were written by educational organizations; one letter was sent by a State approving agency; colleges and universities sent the remainder of the letters.

Two of the letter writers objected to the change in the definition of "standard class session" contained in § 21.4200(g). In particular they objected to the deletion of the word "normally" as making this regulation too restrictive.

The VA does not think it has the authority to leave the definition of "standard class session" unchanged. The Veterans' Rehabilitation and Education Amendments of 1980 provided a definition of "standard class session" which did not include the word "normally". In this case where the Congress has corrected a definition which the VA has used previously, the agency has no choice but to follow the definition stated in the law. In order to alleviate any problems which this may cause colleges and universities which

have class sessions shorter than 50 minutes, § 21.4272(f) now contains a provision which permits measurement of these courses on the same basis as courses with standard class sessions.

Two colleges objected to the apparent retroactive increase in monthly benefits. They feared this would require them to recalculate the amount of financial aid due students during the last school year.

The VA must retain the October 1, 1980 and the January 1, 1981 effective dates inasmuch as the law so provides. Although the VA regulations, which these changes amend, provided for a lower rate of payments, the VA, after September 30, 1980, actually made payments based on the higher rates stated in the law. The rates now being incorporated in the regulations, therefore, are not retroactive, but merely show the rates governing payments made since October 1, 1980. If a veteran received the higher rates from the VA but misled others as to the fact in order to obtain other forms of student aid, the group or agency providing the aid must seek redress from the student.

One person objected to the proposed amendment to § 21.4252(g). He stated that vocational schools should not be penalized if their graduates do not find employment. This regulation is based upon the requirements for vocational school graduates enacted among the provisions of the Veterans' Rehabilitation and Education Amendments of 1980. This requirement was cancelled in 1982 by subsequent legislation; however the VA has decided to make this regulation final without change to provide guidance for cases which arose during the 1980-82 period. It obviously will apply only to the period 1980-82, since a new regulation will be proposed and adopted to provide rules in accordance with the current law.

The VA received two comments on the amendment to § 21.4260. One commenter suggested not making these regulations final until the Department of Education makes final its regulation concerning training in foreign medical schools. He pointed out that the General Accounting Office has suggested that the VA follow the lead of the Department of Education in this area.

The VA has decided not to accept this suggestion. The Department of Education published its final rules concerning foreign medical schools on February 25, 1983. Rather than wait many months while the VA examines these rules and determines their applicability to the GI Bill, the VA is making this regulation final. If, after completing its review of the Department of Education regulations, the VA

determines that further amendments to § 21.4280 are necessary, it will propose them.

The other commenter criticized § 21.4280 for stating that a foreign degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution in the foreign country. The writer stated that it would be better to require that the veteran obtain a statement from an American graduate school that the degree is acceptable for entrance into the graduate school without qualification.

After carefully considering this suggestion, the VA decided not to accept it. The Congress changed the definition of a foreign institution of higher learning so as to require the VA to rely upon the minister of education in the foreign country. It is in keeping with this action of the Congress to rely upon the standards of the foreign country to determine which foreign degree is the equivalent of a standard college degree.

Five writers stated that the provision of § 21.4277(a) requiring State approving agencies to approve a school's standards of progress is an infringement upon academic freedom. The VA did not intend to infringe upon the academic freedom of colleges and universities. But to remove all doubt, the requirement contained in this portion of the proposal is being deleted from the final regulation. This does not relieve colleges and universities of the requirement contained in the law that they include their standards of progress in their catalogs, and that they submit the catalogs to the State approving agency.

One person stated that if not required elsewhere in the regulations, § 21.4201 should be amended to state that educational institutions should retain their records concerning compliance with the 85-15 percent veteran-nonveteran ratio requirement. The records retention requirements are covered adequately by § 21.4209. Therefore, the VA is not adopting the suggestion.

One writer stated that the amendment to § 21.4202 did not make clear that it is concerned only with disapprovals for further enrollments of veterans and eligible persons rather than further enrollments of anyone. She suggested that § 21.4202 be rewritten.

When read in the context of the entire § 21.4202 including paragraphs (b) and (c), it is clear that § 21.4202 deals only with stopping payments of educational assistance allowance to veterans and eligible persons. Accordingly, the VA has not adopted this suggestion.

One writer suggested that the terms, "reasonable diligence" and "without delay," contained in § 21.4206(e), be defined specifically.

The VA has not adopted this suggestion. What constitutes "reasonable diligence" and reports made "without delay" regarding noncompliance with the law will depend on the individual circumstances at an educational institution. Any attempt to anticipate all possible circumstances or to impose arbitrary standards could lead to unduly restrictive rules, to the detriment of the educational institutions. The agency will monitor this situation. If, in the course of administering this provision, it becomes apparent that strict definitions are needed in order to prevent abuse by the educational institutions, the VA will propose appropriate revisions to the regulation.

Two writers expressed concern about § 21.4272. One stated that State approving agencies should be involved in measuring courses with insufficient, standard class sessions.

The law provides that the approval of courses is generally the function of the State approving agency, while the measurement of courses is the function of the VA. Certainly, while the VA will welcome and consider any suggestions which any State approving agency may have, the ultimate responsibility for making a final determination must be the VA's. To require State approving agency involvement would improperly imply that the VA's decision is subject to the State approving agency's concurrence.

The other writer suggested that the VA rewrite § 21.4272(f) to make clear that regional accrediting associations do not define the length of a class session as do some of the specialized accrediting groups. However, the proposed wording is broad enough to cover all agencies that do, and the regional groups may elect to do so in the future. The paragraph will not have to be amended if the regional accrediting associations change their policies in the future. The agency has added a phrase to § 21.4272(f) to show that it may apply to regional accrediting associations as well as to other accrediting associations.

As a result of the VA's own internal analysis, some modifications have also been made to §§ 21.4131, 21.4135 and 21.4136. These regulations more accurately reflect the law's effect on payments to incarcerated veterans and eligible persons.

The VA has determined that these regulations contain no major rules as defined in Executive Order 12291.

The regulations will not of themselves have an effect on the economy of \$100

million or more annually. They contain an increase in the monthly rates of educational assistance allowance which has an effect of this magnitude. This increase, however, merely restates what is already stated in the law (Pub. L. 96-466).

These amended regulations should not cause a major increase in costs for anyone. There may be an increase in costs for some high schools which will have to keep additional records if they admit a serviceperson, but this increase should be minor.

These amended regulations will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Analysis. A few of these regulations would have a significant economic impact on small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. In some cases the impact would be positive.

The VA received no comments on its initial regulatory flexibility analysis. Anyone interested in obtaining the final regulatory analysis for these regulations should write to: June C. Schaeffer [225], Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

The regulatory flexibility analysis analyzes the amendments to 38 CFR 21.4130, 21.4277, 21.4201, 21.4252, and 21.4206. The Administrator of Veterans' Affairs hereby certifies that the remainder of these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The remainder of the regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603-604. This certification is based on the fact that the remainder of the regulations either make mere editorial and internal technical changes, or primarily will affect individual benefit recipients. While the latter may have some indirect economic effect on some small entities, it will not be significant in magnitude.

The Catalog of Federal Domestic Assistance number for the programs affected by this proposal are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 1, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

The Veterans Administration amends 38 CFR Part 21 as set forth below:

1. Section 21.1030 is revised as follows:

§ 21.1030 Claims.

The veteran must file a specific claim for educational assistance allowance in the form prescribed by the Administrator. Servicepersons must consult with their service education officer before applying for educational assistance. (38 U.S.C. 1671)

2. In § 21.1031, paragraph (a) is revised as follows:

§ 21.1031 Informal claims.

(a) The Veterans Administration will consider any communication from a veteran, an authorized representative or a Member of Congress to be an informal claim, if it indicates an intent to apply for educational assistance. If the veteran has not filed a formal claim, the Veterans Administration will send him or her an application form when it receives an informal claim. If the Veterans Administration receives the application form within 1 year after the date it was sent to the veteran, the Veterans Administration will consider it filed on the date of receipt of the informal claim. (38 U.S.C. 1671)

3. In § 21.1032, the introductory portion preceding paragraph (a) and paragraphs (b), (c) and (d)(1) are revised as follows:

§ 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 because of a dependent. (38 U.S.C. 1671)

(b) *New claim.* After the claim is abandoned, any subsequent communication which is an informal claim is a new application. The date of receipt of the communication is the date of application. (38 U.S.C. 1671)

(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.

(d) *Time limit for filing a claim for an extended period of eligibility.* . . .

(1) October 17, 1981, (38 U.S.C. 1662(a))

4. In § 21.1041, paragraphs (a)(4), (b), (c), and (d)(2) are revised as follows:

§ 21.1041 Periods of entitlement.

(a) *General.* . . .

(4) The 45 months limitation may be exceeded when the Veterans Administration authorizes an extension under paragraph (d) of this section, or when the Veterans Administration makes no charge against entitlement, as provided in § 21.1045(a) because the veteran, serviceperson or eligible person is pursuing a course at a secondary level under the Program of Special Assistance for the Educationally Disadvantaged. (38 U.S.C. 1662)

(b) *Prior Veterans Administration training.* The period of entitlement for educational assistance when added to education or training received under any laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance, except as provided in paragraph (a)(4) of this section. The Veterans Administration will compute a reduction in the period of entitlement because of prior training as provided in paragraph (c) of this section. (38 U.S.C. 1662)

(c) *Reduction for prior Veterans Administration training.* Where the period of entitlement is subject to reduction by reason of prior training, the Veterans Administration will convert the period remaining to months and days after subtracting the period of prior training. (38 U.S.C. 1795)

(d) *Extension.* . . .

(2) When the period of entitlement ends after more than half the course has been completed the veteran's or eligible person's period of entitlement will be extended—

(i) In a course consisting exclusively of flight training—

(A) To the end of the course or
(B) The additional amount of instruction that \$846 will provide effective October 1, 1980 and \$888 will provide effective January 1, 1981, whichever is less;

(ii) In a course pursued exclusively by correspondence—

(A) To the end of the course or
(B) The additional amount of instruction that \$916 will provide effective October 1, 1980 and \$958 will

provide effective January 1, 1981, whichever is less;

(iii) In all other schools—

(A) To the end of the course or

(B) For 12 weeks, whichever is less. (38 U.S.C. 1661, 1677(b), 1786(a))

5. In § 21.1043, paragraph (d) is revised as follows:

§ 21.1043 Extended period of eligibility.

(d) *Discontinuance.* If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), the Veterans Administration will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility. (38 U.S.C. 1662)

6. Section 21.1045 is revised as follows:

§ 21.1045 Entitlement charges.

The Veterans Administration will make charges against entitlement only when required by this section. Charges will be based upon the principle that a veteran or eligible person who trains full time for 1 day should be charged 1 day of entitlement. The provisions of this section apply to veterans, eligible persons training under chapter 35, title 38, United States Code, as well as to veterans training under chapter 31, title 38, United States Code who make a valid election under § 21.21 to receive educational assistance allowance equivalent to that paid to veterans training under chapter 34.

(a) *Courses resulting in no entitlement charge.* The Veterans Administration will make no charge against the entitlement of—

(1) An eligible serviceperson who is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235;

(2) A veteran, eligible spouse or surviving spouse who—

(i) On October 1, 1980 was pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235; and

(ii) Has remained continuously enrolled since October 1, 1980, in a course leading to a secondary school diploma or an equivalency certificate.

(3) A veteran, eligible spouse or surviving spouse who—

(i) Is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235; and

(ii) Received educational assistance allowance based upon the tuition and fees charged for the course; or

(4) A veteran, not on active duty, eligible spouse or surviving spouse who is pursuing refresher, remedial or deficiency courses. (38 U.S.C. 1691, 1733)

(b) *Course for which entitlement will be charged.* The Veterans Administration will make a charge against the period of entitlement of—

(1) A veteran or serviceperson for a program consisting of flight training under chapter 34;

(2) A veteran or eligible person for a program of apprenticeship or other on-the-job training under chapter 34 or 35;

(3) A veteran or serviceperson under chapter 34 or a spouse or surviving spouse under chapter 35 who is pursuing a correspondence course; or

(4) A veteran, not on active duty, eligible spouse or surviving spouse who—

(i) Is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.4235;

(ii) Elects to receive educational assistance allowance at the rate described in § 21.4136(a) or § 21.4137(a), as appropriate; and

(iii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1, 1980, or has not remained continuously enrolled in such a course since October 1, 1980; or

(5) A serviceperson under chapter 34 or an eligible child under chapter 35 who is pursuing a refresher, remedial or deficiency course; or

(6) A veteran, serviceperson or eligible person under either chapter 34 or 35 for the pursuit of any course not described in paragraph (a) of this section. (38 U.S.C. 1661, 1677(b), 1691)

(c) *Determining entitlement charge.* The provisions of this paragraph do not apply to those courses listed in paragraph (a) of this section or to flight training, apprenticeship or other on-the-job training, correspondence courses, or to courses offered through independent study.

(1) For all other courses the Veterans Administration will make a charge against entitlement—

(i) On the basis of total elapsed time (1 day for each day of pursuit) if the veteran or eligible person is pursuing the program of education on a full-time basis;

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or eligible person is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training

time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) The Veterans Administration will compute elapsed time from the commencing date of enrollment to date of discontinuance. If the veteran or eligible person changes his or her training time after the commencing date of enrollment, the Veterans Administration will—

(i) Divide the enrollment period into separate periods of time during which the veteran's or eligible person's training time remains constant; and

(ii) Compute the elapsed time separately for each time period. (38 U.S.C. 1661)

(d) *Entitlement charge—Independent study.* The Veterans Administration will make charges against the entitlement of a veteran or eligible person in the manner described in paragraph (c) of this section, if he or she is pursuing a program of education solely by independent study. However, the computation will always be made as though the veteran's or eligible person's training were one-quarter time. (38 U.S.C. 1682(e))

(e) *Entitlement charge—flight training.* The charge against entitlement for pursuit of a program consisting of flight training shall be 1 month for each—

(1) \$302 which is paid to the veteran as an educational assistance allowance after September 30, 1980 and before January 1, 1981 for flight training; and

(2) \$317 which is paid to the veteran as an educational assistance allowance after December 31, 1980 for flight training. (38 U.S.C. 1677(b))

(f) *Entitlement charge—apprenticeship or other on-the-job training.*

The charge against entitlement for pursuit of apprenticeship or other on-the-job training program shall be 1 month for each month educational assistance allowance is paid to the veteran or eligible person for the program. If there are deductions from the veteran's or eligible person's educational assistance allowance due to his or her excessive absences, the Veterans Administration will combine the portions of a month for which deductions were made. The Veterans Administration will make no charge against the entitlement for the period of combined deductions. (38 U.S.C. 1787)

(g) *Entitlement charge—correspondence course.* (1) For contracts entered into before January 1, 1973 the charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each \$175 paid as educational assistance allowance;

(2) For contracts entered into after December 31, 1972 the charge against entitlement for pursuit of a course exclusively by correspondence will be 1 month for each—

(i) \$220 paid after December 31, 1972 and before September 1, 1974 to a veteran or surviving spouse as an educational assistance allowance.

(ii) \$260 paid after August 31, 1974 and before January 1, 1975.

(iii) \$270 paid after December 31, 1974 and before October 1, 1976.

(iv) \$292 paid after September 30, 1976 and before October 1, 1977.

(v) \$311 paid after September 30, 1977 and before October 1, 1980.

(vi) \$327 paid after September 30, 1980 and before January 1, 1981; and

(vii) \$342 paid after December 31, 1980. (38 U.S.C. 1786(a))

(h) *Overpayment cases.* The Veterans Administration will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived, and is not recovered, or is compromised. (38 U.S.C. 1661)

(1) The charge against entitlement if the overpayment is discharged in bankruptcy or is waived and is not recovered will be at the appropriate rate for the elapsed period covered by the overpayment.

(2) The charge against entitlement if the overpayment is compromised will be determined by:

(i) Subtracting the accepted compromise offer from the total amount of the overpayment.

(ii) Dividing the result obtained in paragraph (h)(2)(i) of this section by the total amount of the overpayment; and

(iii) Multiplying the percentage figure obtained in paragraph (h)(2)(ii) of this section by the amount of the entitlement which represents the whole overpaid period. (38 U.S.C. 1661)

(i) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran is enrolled for the term, quarter or semester. The Veterans Administration will make a charge against entitlement for the entire period of certified enrollment, if the veteran is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions: (38 U.S.C. 1661)

(1) Enrollment is actually terminated;

(2) The veteran cancels his or her enrollment, and does not negotiate an

educational benefits check for any part of the certified period of enrollment;

(3) The veteran interrupts his or her enrollment at the end of any term, quarter, or semester within the certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;

(4) The veteran requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and the Veterans Administration continued payments under an established policy based upon an Executive order of the President or an emergency situation. Whether the veteran negotiated a check for educational benefits for the certified period is immaterial. (38 U.S.C. 1661)

(j) *Accelerated payment—chapters 34 and 35.* The Veterans Administration will make a charge against the entitlement of a veteran or eligible person who receives an accelerated payment at the rate of 1 month for each amount of accelerated payment (exclusive of the matching payment from the State and/or local governmental unit) equal to the full-time monthly rate payable to the veteran or eligible person under § 21.4136(a) at the time he or she applied for an accelerated payment. (38 U.S.C. 1682A, 1738)

(k) *Education loan after otherwise applicable delimiting date—chapter 34 or 35 spouse or surviving spouse.* The Veterans Administration will make a charge against the entitlement of a veteran, spouse or surviving spouse who receives an educational loan pursuant to § 21.4501(c) at the rate of 1 day for each day of entitlement that would have been used had the veteran, spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted. (38 U.S.C. 1662, 1712)

7. In § 21.3032, paragraphs (b) and (c) are revised as follows:

§ 21.3032 Time limits.

(b) *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.

(c) *Time limit for filing a claim for an extended period of eligibility.* A claim for an extended period of eligibility provided by § 21.3046(d) must be received by the Veterans Administration by the latest of the following dates:

(1) One year from the date on which the spouse's or surviving spouse's original period of eligibility ended.

(2) One year from the date on which the spouse's or surviving spouse's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(3) October 17, 1981. (38 U.S.C. 1712)

8. In § 21.3046, paragraph (c) is revised as follows:

§ 21.3046 Periods of eligibility; spouses and surviving spouses.

(c) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii).

(2) If the spouse is enrolled in a school operating on a quarter or semester system, the Veterans Administration will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, the Veterans Administration will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, the Veterans Administration will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of course, or

(ii) The total additional amount of instruction that \$916 will provide effective October 1, 1980, or that \$958 will provide effective January 1, 1981.

(5) The Veterans Administration will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c).

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) or (d) of this section, as appropriate. (38 U.S.C. 1711(b), 1712(b), 1732, 1786)

9. Sections 21.3300, 21.3301, 21.3302, 21.3303, 21.3304, 21.3305 and 21.3306 are revised as follows:

§ 21.3300 Special restorative training.

(a) *Purpose of special restorative training.* The Veterans Administration may prescribe special restorative training where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible child to pursue a program of education, special vocational program or other appropriate goal. Medical care and treatment or psychiatric treatment are not included. (38 U.S.C. 1740)

(b) *Special restorative training courses.* The Vocational Rehabilitation Board may prescribe for special restorative training purposes courses such as—

(1) Speech and voice correction or retention.

(2) Language retraining.

(3) Speech (lip) reading.

(4) Auditory training.

(5) Braille reading and writing.

(6) Training in ambulation.

(7) One-hand typewriting.

(8) Nondominant handwriting.

(9) Personal, social and work adjustment training.

(10) Remedial reading, and

(11) Courses at special schools for mentally and physically disabled or

(12) Courses provided at facilities which are adapted or modified to meet special needs of disabled students. (38 U.S.C. 1740)

(c) *Duration of special restorative training.* The Veterans Administration may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of \$103 per calendar month, effective October 1, 1980, and a monthly payment in excess of \$108 per calendar month, effective January 1, 1981. See §§ 21.3303 and 21.3333(b). (38 U.S.C. 1741(b), 1742)

(d) *Special restorative training precluded in Veterans Administration facilities.* Special restorative training will not be provided in Veterans Administration facilities. (38 U.S.C. 1743(b))

§ 21.3301 Need.

(a) *Determination of need.* When the case of a handicapped child is referred to the Vocational Rehabilitation Board, because of a request by a parent or guardian or upon recommendation of a

counselor, the board will consider whether—

(1) There exists a handicap which will interfere with pursuit of a program of education;

(2) It is in the best interests of an eligible child to begin special restorative training after his or her 14th birthday;

(3) The period of special restorative training materially will improve the eligible child's ability to—

(i) Pursue a program of education,

(ii) Pursue a program of specialized vocational training,

(iii) Obtain continuing employment in a sheltered workshop, or

(iv) Adjust in his or her family or community; (38 U.S.C. 1741(a))

(4) The special restorative training may be pursued concurrently with a program of education; and

(5) Training will affect adversely the child's mental or physical condition;

(6) The Veterans Administration—

(i) Has considered assistance available under provisions of State-Federal programs for education of handicapped children, and

(ii) Has determined that it is in the child's interest to receive benefits under chapter 35, (38 U.S.C. 1741(a))

(b) *Development and implementation.* When the board decides that special restorative training is needed, a Veterans Administration counseling psychologist in the Vocational Rehabilitation and Counseling Division will prepare an individualized, written rehabilitation plan. The plan will be prepared jointly with the eligible child and parent or guardian. (38 U.S.C. 1741(a))

(c) *Notification of disallowance.* When a parent or guardian has requested special restorative training on behalf of an eligible child, and the board finds that this training is not needed or will not materially improve the child's condition the Veterans Administration will inform the parent or guardian of the finding. (38 U.S.C. 1713)

(d) *Reentrance after interruption.* When the case of an eligible child is referred for consideration of reentrance into special restorative training following an interruption, the board will recommend approval if there is reasonable expectation that the purpose of special restorative training will be accomplished. See § 21.3306. (38 U.S.C. 1740)

§ 21.3302 Agreements.

(a) *Agreements to provide training.* The Veterans Administration may make agreements with public or private educational institutions or others to provide suitable and necessary special

restorative training for an eligible child. (38 U.S.C. 1743)

(b) *Tuition charge.* When a customary tuition charge is not applicable, the agreement will include the fair and reasonable amounts which may be charged the parent or guardian for the training provided an eligible child. (38 U.S.C. 1743)

(c) *Content of agreement.* Each agreement will include the same type of information required for special restorative training for disabled veterans under 38 U.S.C. ch. 31, including the requirement that the educational institutions, or others with whom arrangements have been made, report to the Veterans Administration promptly the eligible child's enrollment in, interruption or termination of the course of special restorative training. (38 U.S.C. 1743)

§ 21.3303 Extent of training.

(a) *Length of special restorative training.* Ordinarily, special restorative training may not exceed 12 months. When the Vocational Rehabilitation Board determines that more than 12 months is necessary, it will refer the program to the Director, Vocational Rehabilitation and Counseling Service for prior approval. Where the plan for a program of special restorative training itself (not in combination with the program of education) or special vocational training will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to the Director, Vocational Rehabilitation and Counseling Service for approval. (38 U.S.C. 1743(b))

(b) *Age limitation.* No eligible child may receive special restorative training after reaching age 31. (38 U.S.C. 1712)

(c) *Full-time training.* An eligible child will pursue special restorative training on a full-time basis.

(1) Full-time training requires training for—

(i) That amount of time per week which commonly is required for a full-time course at the educational institution when, based on medical findings, the Veterans Administration determines that the eligible child's physical or mental condition permits training for that amount of time, or

(ii) The maximum time per week permitted by the child's disability, as determined by the Veterans Administration, based on medical findings, if the disability precludes the weekly training time stated in paragraph (c)(1)(i) of this section.

(2) If the hours per week that can reasonably be devoted to restorative training will not of themselves equal the

time required by paragraph (c)(1) of this section, the course will be supplemented with subject matter which will contribute toward the objective of the program of education. (38 U.S.C. 1742(c))

§ 21.3304 Assistance during training.

(a) *General.* A vocational rehabilitation specialist will provide the professional and technical assistance needed by the eligible child in pursuing special restorative training. The assistance will be timely, sustained and personal. (38 U.S.C. 1741)

(b) *Adjustments in the training situation.* The vocational rehabilitation specialist must be continually aware of the eligible child's progress. At frequent intervals he or she will determine whether the eligible child is progressing satisfactorily. When the vocational rehabilitation specialist determines that adjustments are needed in the course or in the training situation, he or she will act immediately to bring about the adjustments in accordance with the following:

(1) When the eligible child or his or her instructor indicates dissatisfaction with elements of the program, the vocational rehabilitation specialist, through personal discussion with the eligible child or his or her instructor or both, will, if possible, correct the difficulty through such means as making minor adjustments in the course or by persuading the eligible child to give more attention to performance.

(2) When major difficulties cannot be corrected, the vocational rehabilitation specialist will prepare a report of pertinent facts and recommendations for action by the Vocational Rehabilitation Board.

(3) Action will be taken to terminate the eligible child's course at the proper time so that his or her entitlement may be conserved when the vocational rehabilitation specialist determines that—

(i) The eligible child is progressing much faster than anticipated, and

(ii) The eligible child's course may be terminated with satisfactory results before the time originally planned. (38 U.S.C. 1741)

§ 21.3305 "Interrupted" status.

(a) *Special restorative training should be uninterrupted.* An eligible child once entered into special restorative training should pursue his or her course to completion without interruption. Wherever possible, continuous training shall be provided for each eligible child, including training during the summer, except where, because of his or her physical condition or other good reason,

it would not be to his or her best interest to pursue training. As long as the eligible child is progressing satisfactorily toward overcoming his or her handicap, the eligible child will be continued in his or her course of training without accounting for days of nonattendance within the authorized enrollment. (38 U.S.C. 1741)

(b) *Interrupting special restorative training.* Special restorative training will be interrupted as necessary under the following conditions:

- (1) During summer vacations or periods when no instruction is given before and after summer sessions.
- (2) During a prolonged period of illness or medical infeasibility.
- (3) When the eligible child voluntarily abandons special restorative training.
- (4) When the eligible child fails to make satisfactory progress in the special restorative training course.
- (5) When the eligible child is no longer acceptable to the institution because of failure to maintain satisfactory conduct or progress in accordance with the rules of the institution.
- (6) When the eligible child's progress is materially retarded because of his or her negligence, lack of application or misconduct. (38 U.S.C. 1741, 1743(b))

§ 21.3306 Reentrance after interruption.

When a course of special restorative training has been interrupted and the eligible child presents himself or herself for reentrance, the Veterans Administration will act as follows:

(a) *Action by a vocational rehabilitation specialist.* A vocational rehabilitation specialist will approve reentrance when special restorative training was interrupted—

- (1) For a scheduled vacation period, such as a summer break,
- (2) For a short period of illness, or
- (3) For other reasons which permit reentrance in the same course of special restorative training without corrective action. (38 U.S.C. 1743(b))

(b) *Referral to the Vocational Rehabilitation Board.* (1) The vocational rehabilitation specialist will refer the eligible child's case to the Vocational Rehabilitation Board when special restorative training was interrupted—

- (i) By reason of failure to maintain satisfactory conduct or progress, or
 - (ii) For any other reason which requires corrective action, such as change of place of training, change of course, personal adjustment, etc.
- (2) If the Vocational Rehabilitation Board determines that the conditions which caused the interruption can be overcome, it will recommend the necessary adjustment.

(3) The Vocational Rehabilitation Board will deny reentrance when—

- (i) All efforts by the board to effect proper adjustment in the case fail, and
- (ii) The board determines that adjustment cannot be made. (38 U.S.C. 1741, 1743(b))

10. Section 21.3307 is added to read as follows:

§ 21.3307 "Discontinued" status.

(a) *Placement in "discontinued" status.* The Veterans Administration will place an eligible child in "discontinued" status when the Vocational Rehabilitation Board denies reentrance of the eligible child into special restorative training. (38 U.S.C. 1743(b))

(b) *Notification.* In any case of discontinuance the Veterans Administration will:

- (1) Notify the eligible child's parent or guardian of the action taken, and
- (2) Inform him or her of the eligible child's potential right to a program of education (38 U.S.C. 1743(b)).

(c) *Effect of discontinuance.* An eligible child who has been placed in "discontinued" status is precluded from any further pursuit of special restorative training until a Veterans Administration counseling psychologist in the Vocational Rehabilitation and Counseling Division determines that the cause of the discontinuance has been removed (38 U.S.C. 1743(b)).

11. In § 21.3333, paragraphs (a), (b) and (c)(2) are revised as follows:

§ 21.3333 Rates.

(a) *Rates.* (1) Special training allowance is payable at the following monthly rate effective October 1, 1980 except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training.	\$327	If costs for tuition and fees average in excess of \$103 per month, rate may be increased by such amount in excess of \$103. (38 U.S.C. 1742)

(2) Special training allowance is payable at the following monthly rate effective January 1, 1981 except as provided in paragraph (c) of this section.

Course	Monthly rate	Accelerated charges
Special restorative training.	\$342	If costs for tuition and fees average in excess of \$108 per month, rate may be increased by such amount in excess of \$108. (38 U.S.C. 1742)

(b) *Accelerated charges.* (1) Effective October 1, 1980 the Veterans Administration may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each \$10.92 that the special training allowance exceeds the basic monthly rate of \$327.

(2) Effective January 1, 1981 the Veterans Administration may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each \$11.44 that the special training allowance exceeds the basic monthly rate of \$342.

(3) The Veterans Administration will:

- (i) Charge fractions of more than one-half day as 1 day;
- (ii) Disregard fractions of one-half or less; and
- (iii) Record charges when the eligible child is entered into training (38 U.S.C. 1742).

(c) *Payments in Philippine pesos.*

(2) The eligible child is pursuing training at an institution located in the Republic of the Philippines (38 U.S.C. 1732, 1742, 1765).

12. Section 21.4001 is amended as follows:

(a) By removing the reference "Part 18 of this chapter" and inserting "§§ 18.1 through 18.13 of this chapter" in the last sentence of paragraph (d).

(b) By revising paragraphs (a), (b) and (c) as follows:

§ 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 Education Service designated by him or her to make findings and decisions under 38 U.S.C. chs. 34, 35, and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs (38 U.S.C. 212(a)).

(b) Authority is delegated to the Chief, Benefits Director and the Director, Education Service to enter into agreements for the reimbursement of State approving agencies under § 21.4153 (38 U.S.C. 212(a)).

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

(1) Waiver of penalties for conflicting interests as provided by § 21.4005;

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

(3) Approval of courses under § 21.4250(c). (38 U.S.C. 212(a))

§ 21.4002 [Amended]

12a. Section 21.4002 is amended by removing the references "§§ 19.153 and 19.154 of this chapter" and inserting "§§ 19.192 and 19.193 of this chapter" in paragraph (a).

13. In § 21.4006, paragraphs (a)(2), (b) and (c) are revised and a title is added to paragraph (a) as follows:

§ 21.4006 False or misleading statements.

(a) *Payments may not be based on false statements.*

(2) When the Veterans Administration discovers that a certification or claim is false after it has released payment, the Veterans Administration will establish an overpayment for only that portion of the claim to which the claimant was not entitled (38 U.S.C. 1780).

(b) *Effect of false statements on subsequent payments.* A claimant's false or misleading statements are not a bar to payments based on further training (38 U.S.C. 1780).

(c) *Forfeiture.* The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of § 21.4007 (38 U.S.C. 3503).

§ 21.4007 [Amended]

13a. Section 21.4007 is amended by removing the references "§§ 19.1, 19.2 and 19.3 of this chapter" and inserting "§§ 10.1, 19.2 and 19.5 of this chapter."

14. Section 21.4008 is revised to read as follows:

§ 21.4008 Prevention of overpayments.

When approval of a course may be withdrawn, and overpayments may exist or be created, the Veterans Administration may suspend further payments to veterans or eligible persons enrolled in the school until the question of withdrawing approval is resolved. See § 21.4134 (38 U.S.C. 1790(b)).

15. In § 21.4009, paragraphs (a) and (b) are revised as follows:

§ 21.4009 Overpayments—waiver or recovery.

(a) *General.* (1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person

constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Veterans Administration determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by

§§ 21.4203 and 21.4204, excessive absences from a course or discontinuance or interruption of a course by a veteran or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Veterans Administration may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Veterans Administration may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Veterans Administration determines the false certification or misrepresentation resulted from an administrative error or a misstatement of fact and that no criminal or civil action is warranted.

(4) If the Veterans Administration recovers any part of the overpayment from the educational institution, it may reimburse the educational institution if the Veterans Administration subsequently collects the overpayment from a veteran or eligible person. The reimbursement will be made when the total amount of the overpayment collected from the veterans, eligible persons and the educational institution exceeds the total amount for which the educational institution is liable and will be equal to the excess.

(5) This paragraph does not preclude the imposition of any civil or criminal liability under this or any other law. (38 U.S.C. 1785)

(b) *Reporting.* (1) If a school is required to make periodic or other certifications, the Veterans Administration may consider the following in determining whether a school is potentially liable for an overpayment:

(i) The school's failure to report, or to report timely facts which resulted in an overpayment, or

(ii) The school's submission of an incorrect certification as to fact.

(2) In either instance the Veterans Administration will consider other pertinent factors such as:

(i) Allowing for occasional clerical error or occasional administrative error;

(ii) The school's past reliability in reporting;

(iii) The adequacy of the school's reporting system; and

(iv) The extent of noncompliance with reporting requirements. (38 U.S.C. 1785)

16. Section 21.4020 is revised as follows:

§ 21.4020 Two or more programs.

(a) *Limit on training under two or more programs.* The aggregate period for which any person may receive assistance under two or more of the following laws may not exceed 48 months (or the part-time equivalent):

(1) Part VII or VIII, Veterans Regulations numbered 1(a), as amended;

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

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

(4) 39 U.S.C. chs. 32, 34, 35 and 36 and the former chapter 33 (38 U.S.C. 1795(a)).

(b) *Limit on combining assistance received under Chapter 31 with assistance under another program.* No person may receive assistance under chapter 31, title 38, United States Code in combination with any provisions of law listed in paragraph (a) of this section in excess of 48 months (or the part-time equivalent) unless the Veterans Administration determines that additional months of benefits under chapter 31 are necessary to accomplish the purpose of the veteran's rehabilitation program (38 U.S.C. 1795(b)).

17. Section 21.4022 is amended as follows:

A. By removing the words "his" and "he" and inserting the words "his or her" and "he or she" respectively in the first sentence of paragraph (a).

B. By revising paragraph (b) as set forth below:

§ 21.4022 Nonduplication—38 U.S.C. Chs. 31, 34, and 35.

(b) *Prior training.* If a veteran, who is also an eligible person, has received educational assistance under chapter 34 or 35, the program previously pursued will be utilized to the fullest extent practicable in determining the character and duration for which enrollment may be approved under the other chapter (38 U.S.C. 1671, 1721).

18. Section 21.4025 is amended as follows:

A. By removing the word "him" and inserting the words "him or her" in paragraphs (a)(2) and (b)(3).

B. By removing the word "he" and inserting the words "he or she" in paragraph (b)(1).

C. By revising paragraph (b)(2) as follows: the introductory text of paragraph (b) is reprinted for the convenience of the reader:

§ 21.4025 Nonduplication—Federal programs.

(b) *Chapter 34.* Payment of educational assistance allowance is prohibited to an otherwise eligible veteran:

(2) For a unit course or courses which are being paid for in whole or in part by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or (38 U.S.C. 1781)

19. In § 21.4102, paragraph (a) is revised as follows:

§ 21.4102 Requirement—38 U.S.C. Chapter 35.

(a) *Child.* (1) Counseling is required for an eligible child if:

(i) The eligible child may require specialized vocational or special restorative training; or

(ii) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday nor completed secondary schooling (See § 21.3040(a)).

(2) In all other cases the counseling psychologist will assist in preparing an educational plan only of the eligible child, or his or her parent or guardian requests assistance (38 U.S.C. 1720, 1736, 1741, 1761).

20. Section 21.4105 is revised as follows:

§ 21.4105 Special training—38 U.S.C. Chapter 35.

(a) *Initial counseling.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division will counsel a handicapped person before a case is considered by the Vocational Rehabilitation Board (established under § 21.715 to determine need for a course of specialized vocational training or special restorative training (38 U.S.C. 1736)).

(b) *Counseling after special restorative training.* When an eligible child completes or discontinues a course of special restorative training without having selected an objective and a program of education, a counseling psychologist in the Vocational Rehabilitation and Counseling Division will provide additional counseling to

assist the child in selecting a program of education (38 U.S.C. 1761).

21. Section 21.4130 is revised as follows:

§ 21.4130 Educational assistance allowance.

(a) *Payments of educational assistance allowance.* The Veterans Administration will pay educational assistance allowance at the rate specified in §§ 21.4136 or 21.4137 while the veteran or eligible person is pursuing a program of education or training (38 U.S.C. 1682, 1691, 1732, 1780(a)).

(b) *Excessive absences cause reduced payments.* Except for apprenticeship and other on-the-job training programs, the Veterans Administration will make no payment for excessive absences (as determined under § 21.4205(b)) from a course not leading to a standard college degree. (See § 21.4136(f) and § 21.4137(f) for proportionate reduction where less than 120 hours are completed during a month in apprenticeship and other on-job training programs.) (38 U.S.C. 1780(a)).

(c) *No payment for excessive training.* (1) The Veterans Administration will make no payment for:

(i) Training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency or Veterans Administration; or

(ii) Lessons completed in a correspondence course in excess of the number approved by the State approving agency.

(2) A school's standards of progress may permit a student to repeat a course or portion of a course in which he or she has done poorly. The Veterans Administration considers the repeated courses to be part of the program of education. The Veterans Administration will make no payment for:

(i) Flight training beyond the approved length of the course or beyond repeated portions of the approved course permitted by the flight school's approved standards of progress; or

(ii) Training in any course if the training is not part of the veteran's or eligible person's program of education (38 U.S.C. 1652).

(d) *Commencing date.* The commencing date will be the date of entrance or reentrance into a course as determined under § 21.4131 (38 U.S.C. 1681(a), 1780(a)).

(e) *Ending date.* 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:

(i) The veteran's eligibility as determined by §§ 21.1041, 21.1042, and 21.1043, or

(ii) The ending date of the eligible person's eligibility as determined under §§ 21.3041, 21.3042, and 21.3046.

(3) The ending date specified in § 21.4135 (38 U.S.C. 1662(a), 1681(a), 1780(a)).

(f) *Final payment.* The Veterans Administration may withhold final payment until the Veterans Administration receives proof of continued enrollment and adjusts the veteran's or eligible person's account (38 U.S.C. 1780).

22. In § 21.4131, the introductory text is reprinted for the convenience of the reader paragraphs (b) and (g) are revised and paragraphs (h) and (i) are added so that the added and revised material reads as follows:

§ 21.4131 Commencing dates.

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

(b) *Certification by school; course leads to standard college degree.* (1) When the student enrolls in any course or subject other than one described in paragraph (b) (2) and (3) of this section, the commencing date of the award or increased award of educational assistance allowance will be:

(i) The date of registration in the term, quarter or semester.

(ii) The date of reporting when the student is required by published standards to report in advance of registration.

(2) When the student enrolls in a resident course or subject and the first day of classes does not occur before the end of the first regularly scheduled calendar week of classes during a term, quarter or semester, the commencing date of the award or increased award of educational assistance allowance will be the first day of classes.

(3) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or increased award of educational assistance allowance will be the first day of classes (38 U.S.C. 1681(a), 1780(a)).

(g) *Correction of military records* (§§ 21.1042(b), 21.3042(b)). Eligibility of a veteran may arise as the result of correction or modification of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal under 10 U.S.C.

1553, or other competent military authority. In these cases the commencing date of educational assistance allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department (38 U.S.C. 1662(b)).

(h) *Individuals in a penal institution.* If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.4136 (n), (o), (p), (q) or (r) of § 21.4137 (k) or (l), the rate will be increased or benefits will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program, or

(2) The date of the release from prison, jail or penal institution. (38 U.S.C. 1682(g), 1732, 1780(a)).

(i) *Individuals in a work-release program or halfway house.* If a veteran or eligible person is being paid a reduced rate of educational assistance allowance under § 21.4136(r) or 21.4137(l) because he or she is in a work-release program or halfway house because of a conviction for a felony, the rate will be increased to the monthly rate otherwise applicable effective the earlier of the following dates:

(1) The date on which the Federal Government or a State or local government stops paying all of his or her living expenses, or

(2) The date of the release or parole of the veteran or eligible person from the halfway house or work-release program (38 U.S.C. 1682(g), 1732, 1780(a)).

§ 21.4131 [Amended]

23. Immediately following § 21.4131 the cross reference "Special restorative training. See § 21.3331" is removed.

24. In § 21.4135, paragraphs (m), (s)(3), and (x) are added to read as follows:

§ 21.4135 Discontinuance dates.

(m) *Incarceration in prison or jail.* (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate—

(i) Under § 21.4136 (n), (p) or (q) or § 21.4137(k), or

(ii) Because he or she is incarcerated for conviction of a felony as provided in

§§ 21.4136 (o) or (r) and 21.4137 (j) or (l).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program;

(ii) The date the veteran or eligible person is incarcerated in prison or jail; or

(iii) The commencing date of the award as determined by § 21.4131. (38 U.S.C. 1682(g), 1732(e), 1780(a))

(s) *Reduction in rate of pursuit of course* (§ 21.4270). * * *

(3) An individual, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4136(f) are met. If those requirements are not met, the Veterans Administration will reduce the individual's benefits effective the date the subject or subjects were completed (38 U.S.C. 1780).

* * * * *

(x) *Individuals in a work-release program or halfway house.* If a veteran or eligible person becomes restricted to payment at a reduced rate of educational assistance under § 21.4136(r) or § 21.4137(l), because he or she is in a work-release program or halfway house following a felony conviction, the reduced rate will be effective the latest of the following dates:

(1) The date on which he or she was placed in the work-release program or halfway house,

(2) The date the Federal Government or State or local government began defraying all of his or her living expenses, or

(3) The commencing date of his or her award as determined by § 21.4131 (38 U.S.C. 1682(g), 1732, 1780(g)).

25. In § 21.4136, paragraphs (a), (c), (b) and (j)(1) are revised, paragraphs (l), (m), (n), (o), (p), (q), (r), (s) and (t) are added and paragraph (j)(4) is removed. The added and revised material reads as follows:

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

(a) *Rates.* (1) Educational assistance allowance is payable at the following monthly rates effective October 1, 1980:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time.....	\$327	\$369	\$443	\$27
¾ time.....	245	292	332	20
½ time.....	164	195	222	14
Less than ½ but more than ¼ time ¹	* 164			
¼ time or less ²	* 82			
Cooperative, other than farm cooperative (full time only)	264	309	351	21
Apprentice or on-job (full time only but see footnote ³ below.) Payment designated training assistance allowance:				
First 6 months.....	237	267	291	13
Second 6 months.....	177	207	232	13
Third 6 months.....	119	148	172	13
Fourth 6 months and succeeding periods.....	59	88	113	13
Correspondence.....	(*)	(*)	(*)	(*)
Flight training.....	(*)	(*)	(*)	(*)
Farm Cooperative:				
Full time.....	264	309	351	20
¾ time.....	198	232	263	15
½ time.....	132	155	176	10

¹ If a veteran under chapter 34 receiving benefits under § 21.4280(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$164 or \$82, as appropriate, per month if the maximum allowance is not initially authorized.

² See paragraph (b) of this section.

³ See footnote 5 of § 21.4270(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

⁴ 70 percent of the established charge for number of lessons completed by the veteran and serviced by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran, whichever is the lesser. Enrollments before January 1, 1973, will receive 100 percent of the established charges. Enrollments after December 31, 1972 and before September 2, 1980 will receive 90 percent of the established charges provided the student remains continuously enrolled in his or her program. The Veterans Administration considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g).

⁵ 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. If a veteran or serviceperson enrolls in a flight course before September 2, 1980, he or she will receive 90 percent of the established charge for the course, provided he or she remains continuously enrolled in his or her program. The Veterans Administration will consider the continuity of enrollment broken when the veteran or serviceperson receives no flight training for a period of 6 or more consecutive months. Allowance paid monthly based on actual flight training received. See § 21.1045(e). (38 U.S.C. 1677, 1682, 1786, 1787.)

(2) Educational assistance allowance is payable at the following monthly rates effective January 1, 1981:

Type of courses	Monthly rate			
	No dependents	1 dependent	2 dependents	Additional for each additional dependent
Institutional:				
Full time	\$342	\$407	\$484	\$29
3/4 time	257	305	348	22
1/2 time	171	204	232	15
Less than 1/2 but more than 1/4 time	* 171	—	—	—
1/4 time or less	* 86	—	—	—
Cooperative, other than farm cooperative (full time only)	276	323	367	21
Apprentice or on-job (full time only but see footnote 3 below). Payment designated training assistance allowance:				
First 6 months	249	278	305	19
Second 6 months	186	217	243	13
Third 6 months	124	155	180	13
Fourth 6 months and succeeding periods	62	92	119	13
Correspondence:	(*)	(*)	(*)	(*)
Fight training:	(*)	(*)	(*)	(*)
Farm Cooperative:				
Full time	276	323	367	21
3/4 time	207	242	275	16
1/2 time	138	162	184	11

* If a veteran under chapter 34 receiving benefits under § 21.426(b)(2) completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$171 or \$86, as appropriate, per month if the maximum allowance is not initially authorized.

† See paragraph (b) of this section.

‡ See footnote 5 of § 21.427(b) for measurement of full time and paragraph (i) of this section for proportionate reduction in award for completion of less than 120 hours per month.

§ 70 percent of the established charge for number of lessons completed by the veteran and serviced by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible veteran, whichever is the lesser. Enrollments before January 1, 1973 will receive 100 percent of the established charges. Enrollments after December 31, 1972 and before September 2, 1980 will receive 90 percent of the established charges provided the student remains continuously enrolled in his or her program. The Veterans Administration considers the continuity of an enrollment broken when there are more than 6 months between the servicing of lessons—Allowance paid quarterly. See § 21.1045(g).

§ 80 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. If a veteran or serviceperson enrolls in a flight course before September 2, 1980, he or she will receive 90 percent of the established charge for the course, provided he or she remains continuously enrolled in his or her program. The Veterans Administration will consider the continuity of enrollment broken when the veteran or serviceperson receives no flight training for a period of 6 or more consecutive months. Allowance paid monthly based on actual flight training received. See § 21.1045(e). (38 U.S.C. 1677, 1682, 1786, 1787)

(c) **Active duty.** The monthly rate for an individual who is pursuing a program of education while on active duty may not exceed the lesser of the following rates:

(1) The monthly rate of the cost of the course as specified in paragraph (b) of this section, or

(2) The appropriate rate from this table:

Measurement	Rates effective Oct. 1, 1980	Rates effective Jan. 1, 1981
Full time	\$327	\$342
3/4 time	245	257
1/2 time	164	171
Less than 1/2, but more than 1/4 time	164	171
1/4 time or less	82	86

(38 U.S.C. 1682)

(h) **Payment.** (1) The Veterans Administration will pay educational assistance allowance in a lump sum for an entire term, quarter or semester at the rates specified in paragraphs (b) and

(c) of this section to or on behalf of a serviceperson who—

(i) Is training on a less than half-time basis, and

(ii) Is enrolled in an institution operating on a term, quarter or semester basis.

(2) The Veterans Administration will make these payments during the month immediately following the month in which the Veterans Administration receives certification from the educational institution that the serviceperson has enrolled in and is pursuing a program at the institution. (38 U.S.C. 1780(d))

(j) **Advance payment.** (1) **Eligibility.** The Veterans Administration shall pay educational assistance allowance at the rates specified in paragraph (a) of this section to an eligible veteran, or serviceperson on active duty enrolled in an approved educational institution on a half-time or more basis. (38 U.S.C. 1780)

(l) **Courses leading to a secondary school diploma or equivalency certificate.** (1) The monthly rate of

educational assistance allowance payable to a serviceperson enrolled in a course leading to a secondary school diploma or an equivalency certificate shall be the rate specified in paragraph (c) of this section.

(2) The monthly rate of educational assistance allowance payable to a veteran, not on active duty, who is enrolled in a course leading to a secondary school diploma or equivalency certificate shall be determined as follows:

(i) The monthly rate shall be the rate for institutional training stated in paragraph (a) of this section if—

(A) The veteran was enrolled in the course on October 1, 1980, and

(B) The veteran has remained continuously enrolled after October 1, 1980 in courses leading to a secondary school diploma or an equivalency certificate.

(ii) If the veteran's enrollment does not meet the requirements of paragraph (1)(2)(i) of this section, the veteran may elect to receive either of the following sets of monthly rates:

(A) The first set is either the monthly rate of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program, or the monthly rate for institutional training found in paragraph (a) of this section, whichever is less.

(B) The second set of monthly rates is the monthly rate for institutional training found in paragraph (a) of this section. See § 21.1045 for the way in which this election will affect the charge against the veteran's entitlement. (38 U.S.C. 1691)

(m) **Incarcerated veterans—general.** Notwithstanding the provisions of paragraphs (a) and (c) of this section, some incarcerated veterans and servicepersons may have their educational assistance allowance terminated or reduced. (38 U.S.C. 1682(g), 1780(a))

(n) **No educational assistance allowance for some incarcerated servicepersons.** As with servicepersons who are not incarcerated, the Veterans Administration will not pay educational assistance allowance to an incarcerated serviceperson enrolled in a course for which there are no tuition and fees. Furthermore, effective October 1, 1980, the Veterans Administration will not pay educational assistance allowance to a serviceperson who—

(1) Is enrolled in a course where his or her tuition and fees are being paid for by a Federal program (other than one administered by the Veterans

Administration) or by a State or local program, and

(2) Either—

(i) Is incarcerated in a Federal, State or local prison or jail for reasons other than conviction of a felony, or

(ii) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and has incurred no expenses for supplies, books or equipment. (38 U.S.C. 1682(g), 1780(a))

(c) *No educational assistance allowance for some incarcerated veterans.* (1) *Other than conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) *Conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to a veteran who—

(i) Either—

(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and is having all of his or her living expenses defrayed by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) Either—

(A) Is pursuing the course on a less than half-time basis, or

(B) Is incurring no charge for the books, supplies and equipment necessary for the course. (38 U.S.C. 1682(g), 1780(a))

(p) *Reduced educational assistance allowance for some incarcerated servicepersons.* (1) Effective October 1, 1980, the Veterans Administration will pay reduced educational assistance allowance to a serviceperson who—

(i) Is incarcerated in a Federal, State or local prison or jail for reasons other than a felony conviction, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for in part by a Federal program (other than one administered by the Veterans

Administration) or by a State or local program.

(2) The monthly rate of educational assistance allowance payable to a serviceperson described in paragraph (p)(1) of this section shall equal the lesser of the following:

(i) The monthly rate of the tuition and fees being charged for the course less the monthly rate of the portion of the tuition and fees being paid for by the Federal, State or local program, or

(ii) The monthly rate found in paragraph (c)(2) of this section.

(3) Effective October 1, 1980, the Veterans Administration will pay a reduced education assistance allowance to a serviceperson who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(4) The monthly rate of educational assistance allowance payable to a serviceperson described in paragraph (p)(3) of this section shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees paid by the serviceperson plus the monthly rate of the cost of books, supplies and equipment paid by the serviceperson;

(ii) The monthly rate of the portion of the tuition and fees paid by the serviceperson plus the monthly rate of the portion of the tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in paragraph (c)(2) of this section. (38 U.S.C. 1682(g), 1780(a).)

(q) *Reduced educational assistance allowance for some incarcerated veterans—no felony conviction.* (1) The Veterans Administration will pay reduced educational assistance allowance to a veteran who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than conviction of a felony, and

(ii) Is enrolled in a course where the tuition and fees are being paid for in part by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) The monthly rate of educational assistance allowance payable to such a veteran shall be determined as follows:

(i) If the monthly rate of the tuition and fees less the monthly rate of that

portion of the tuition and fees paid by the government program exceeds the rate found in paragraph (a) of this section, the monthly rate payable is the rate found in paragraph (a) of this section.

(ii) If the monthly rate of the tuition and fees less the monthly rate of that portion of the tuition and fees paid by the government program is less than the rate found in paragraph (a) of this section, the monthly rate payable is the monthly rate of the tuition and fees less the monthly rate of the portion of the tuition and fees paid by the government program. (38 U.S.C. 1780(a))

(r) *Reduced educational assistance allowance for some incarcerated veterans—felony conviction.* (1) The Veterans Administration will pay a reduced educational assistance allowance to a veteran who—

(i) Either—(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and all living expenses are defrayed by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which the veteran pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by the Veterans Administration) or State or local program pays all the charges for tuition and fees, but which requires the veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance allowance payable to such a veteran who is pursuing the course on a half-time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that the veteran must pay plus the monthly rate of the charges to the veteran for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate stated in paragraph (a) of this section for a veteran with no dependents.

(3) The monthly rate of educational assistance allowance payable to such a veteran who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course.

(ii) The monthly rate of tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate stated in paragraph (a) of this section: (38 U.S.C. 1682(g))

(s) *Payment for independent study.* The Veterans Administration shall pay to a veteran who is pursuing only independent study under chapter 34, title 38, United States Code, an educational assistance allowance based on the training time determined in § 21.4272(h) at the rate prescribed in paragraphs (a) and (b) of this section. (38 U.S.C. 1682)

(t) *Payment for independent study-resident training.* A veteran who is pursuing independent study-resident training under chapter 34, title 38, United States Code, shall be paid an educational assistance allowance based on the training time determined in § 21.4272(i) at the institutional rate prescribed in paragraph (a) of this section. (38 U.S.C. 1682)

26. In § 21.4137, paragraphs (a) is revised and paragraphs (i), (j), (k), (l), (m), (n) and (o) are added so that the added and revised material reads as follows:

§ 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 courses	Monthly rate: effective October 1, 1980	Monthly rate: effective January 1, 1981
Institutional:		
Full time	\$327	\$342
¾ time	245	257
½ time	164	171
Less than ½ but more than ¼ time ¹	164	171
¼ time or less ²	82	86
Cooperative (other than farm cooperative full-time only)	264	276
Apprentice or On-Job (full time only but see footnote ¹ below) Payment designated Training Assistance Allowance:		
First 6 months	237	249
Second 6 months	177	186
Third 6 months	119	124
Fourth 6 months and succeeding periods	59	62
Farm Cooperative:		
Full time	264	276
¾ time	168	207
½ time	132	138
Correspondence	(*)	(*)

¹ See footnote 2 of § 21.4270(b) for measurement of full time and paragraph (f) of this section for proportionate reduction in award for completion of less than 120 hours per month.

² 70 percent of established charge for number of lessons completed by eligible spouse or surviving spouse and verified by the school. Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost for the eligible spouse or surviving spouse, whichever is the lesser. Eligible spouses or surviving spouses, who enroll before September 2, 1980 will receive 90 percent of the established charges, provided the student remains continuously enrolled in his or her program. The Veterans Administration considers the continuity of an enrollment broken when there are more than 6 months between the serving of lessons. Allowance paid quarterly. (38 U.S.C. 1734, 1786)

³ If an eligible person under chapter 35 receiving benefits under paragraph (n) of this section completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed \$164 or \$82 as appropriate per month, effective October 1, 1980, and \$171 or \$86 as appropriate per month, effective January 1, 1981 if the maximum allowance is not initially authorized. (38 U.S.C. 1732(c)(3)).

(i) *Incarcerated eligible persons—general.* Notwithstanding the provisions of paragraph (a) of this section, some incarcerated eligible persons may have their educational assistance allowance eliminated or reduced. (38 U.S.C. 1732(e), 1780(a))

(j) *No educational assistance allowance for some incarcerated eligible persons—(1) Other than conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to an eligible person who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than for conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) Which has tuition and fees that are being paid for by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) *Conviction of a felony.* The Veterans Administration will pay no educational assistance allowance to an eligible person who—

(i) Either—

(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and all living expenses are defrayed by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which there are no tuition or fees, or

(B) For which tuition and fees are being paid by a Federal program (other than one administered by the Veterans Administration) or by a State or local program, and

(iii) Either

(A) Is pursuing the course on a less than half-time basis, or

(B) Is incurring no charge for the books, supplies and equipment necessary for the course. (38 U.S.C. 1732(e), 1780(a))

(k) *Reduced educational assistance allowance for some incarcerated eligible persons—no felony conviction.*

(1) The Veterans Administration will pay reduced educational assistance allowance to an eligible person who—

(i) Is incarcerated in a Federal, State or local prison or jail for a reason other than conviction of a felony, and

(ii) Is enrolled in a course where the tuition and fees are being paid in part by a Federal program (other than one administered by the Veterans Administration) or by a State or local program.

(2) The monthly rate of educational assistance allowance payable to such an eligible person shall be determined as follows:

(i) If the monthly rate of the cost of the tuition and fees does not exceed the monthly rate found in paragraph (a) of this section, then the monthly rate of educational assistance allowance payable is the monthly rate found in paragraph (a) of this section less the monthly rate of that portion of the tuition and fees paid by the Federal, State or local government program.

(ii) In all other cases the monthly rate of educational assistance allowance shall be the lesser of the following:

(A) The monthly rate found in paragraph (a) of this section, or

(B) The monthly rate of the tuition and fees being charged for the course less the monthly rate of the portion of the tuition and fees being paid by the Federal, State or local government program. (38 U.S.C. 1780(a))

(l) *Reduced educational assistance allowance for some incarcerated eligible persons—felony conviction.* (1) The Veterans Administration will pay a reduced educational assistance allowance to an eligible person who—

(i) Either—

(A) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(B) Is in a halfway house or work-release program for conviction of a felony and is having all of his or her living expenses paid by a Federal, State or local government, and

(ii) Is enrolled in a course—

(A) For which there are some charges for tuition or fees which the eligible person must pay, or

(B) That requires supplies, books or equipment for which the eligible person must pay, or

(C) Both, and

(iii) Is pursuing the course on a half-time or greater basis.

(2) The monthly rate of educational assistance allowance payable to such an eligible person shall equal the lesser of the following:

(i) The monthly rate of tuition and fees charged for the course plus the monthly rate of the cost of necessary supplies, books and equipment, or

(ii) The monthly rate stated in paragraph (a) of this section. (38 U.S.C. 1732(e))

(m) *Courses leading to a secondary school diploma or equivalency certificate.* The monthly rate of educational assistance allowance payable to an eligible spouse or surviving spouse enrolled in a course leading to a secondary school diploma or equivalency certificate shall be as follows:

(1) The monthly rate shall be the rate for institutional training stated in paragraph (a) of this section if—

(i) The eligible spouse or surviving spouse was enrolled in the course on October 1, 1980, and

(ii) The eligible spouse or surviving spouse has remained continuously enrolled after October 1, 1980 in courses leading to a secondary school diploma or an equivalency certificate.

(2) If the eligible spouse's enrollment does not meet the requirements of paragraph (m)(1) of this section, the eligible spouse may elect to receive either of the following sets of monthly rates:

(i) The first set is either—

(A) The monthly rate of established charges for tuition and fees required of similarly circumstanced nonveterans enrolled in the same program, or

(B) The monthly rate for institutional training found in paragraph (a) of this section, whichever is less.

(ii) The second set of monthly rates is the monthly rate for institutional training found in paragraph (a) of this section. See § 21.1045 for the way in which this election will affect the charge against the eligible spouse's or surviving spouse's entitlement. (38 U.S.C. 1691, 1733)

(n) *Payment for independent study.* The Veterans Administration shall pay to an eligible person pursuing only independent study under chapter 35, title 38, United States Code, an educational assistance allowance based on the training time determined in § 21.4272(h) at the rate prescribed in paragraphs (a) and (b) of this section. (38 U.S.C. 1732)

(o) *Payment for independent study-resident training.* An eligible person pursuing independent study-resident training under chapter 35, title 38, United States Code, shall be paid an educational assistance allowance based on the training time determined in § 21.4272(i) at the rate prescribed in paragraph (a) of this section. (38 U.S.C. 1732)

27. In § 21.4138, paragraphs (a) and (b) are revised as follows:

§ 21.4138 Certifications and release of payments.

(a) *Lump sum—in advance.* (1) A certification by an institution that the eligible individual has enrolled will be sufficient to release an advance lump-sum payment to or on behalf of the individual for the entire quarter, semester or term if—

(i) The individual is a serviceperson on active duty training on a half-time or greater basis, and

(ii) The individual has requested an advance payment.

(2) The Veterans Administration will make an advance lump-sum payment no earlier than 30 days prior to the date the individual's program of training is to begin. (38 U.S.C. 1780(d))

(b) *Lump sum—in month following.* Such a certification by an institution will be sufficient to release the payment of a lump sum to or on behalf of the individual for the entire quarter, semester or term in the month following receipt of the certification by the Veterans Administration provided the individual is:

(1) A serviceperson on active duty training on a less than half-time basis,

(2) A veteran or other eligible person not on active duty and training on a less than half-time basis,

(3) A serviceperson on active duty and training on a half-time or greater basis, who has not requested an advance payment. (38 U.S.C. 1691, 1780)

28. Section 21.4139 is revised as follows:

§ 21.4139 Payee.

(a) *Educational assistance allowance—Chapter 34.* The Veterans Administration will make payment to the veteran or to a duly appointed fiduciary. The Veterans Administration may make direct payment to the veteran even if he or she is a minor. (38 U.S.C. 1780)

(b) *Educational assistance—Chapter 35.* (1) The Veterans Administration will make payment to the eligible person if—

(i) He or she has attained majority and has no known legal disability, or

(ii) It is in his or her best interests, and there is no reason not to designate the eligible person as payee. The Veterans Administration may pay minors under this provision.

(2) When the eligible person is not designated as payee, the Veterans Administration will make payments to—

(i) The eligible person's parent or guardian,

(ii) A fiduciary, or

(iii) Some other suitable person. (38 U.S.C. 1780)

29. In § 21.4140, paragraphs (c), (d) and (e) are added as follows:

§ 21.4140 Apportionment.

(c) *Effects of veteran's incarceration on apportionment.* Whether a veteran's incarceration affects an apportionment of his or her educational assistance allowance depends upon the circumstances surrounding the incarceration and the date the Veterans Administration made the apportionment. (38 U.S.C. 3107(c))

(d) *Apportionment—incarceration due to a felony conviction.* (1) The provisions of this paragraph apply to a veteran whose educational assistance allowance is terminated or reduced because—

(i) The veteran is incarcerated in a Federal, State or local penal institution for conviction of a felony, or

(ii) The veteran is in a halfway house or work-release program for conviction of a felony, and all of his or her living expenses are being defrayed by the Federal government or a State or local government.

(2) The Veterans Administration will terminate the apportionment of the veteran's educational assistance allowance if—

(i) The Veterans Administration made the apportionment after October 16, 1980, or

(ii) The Veterans Administration made the apportionment before October 17, 1980, but it did not continue through all subsequent apportionable periods.

(3) The Veterans Administration will continue the apportionment of the veteran's educational assistance allowance if—

(i) The Veterans Administration made the apportionment before October 17, 1980, and

(ii) The veteran remains enrolled in training at a rate which would otherwise support the apportioned amount.

(4) The Veterans Administration may reduce the apportionment of the educational assistance allowance of a veteran described in paragraph (d)(3) of this section, as in the case of any apportionment, when circumstances change. (38 U.S.C. 3107(c))

(e) *Apportionment—incarceration for reasons other than a felony conviction.*

(1) The provisions of this paragraph apply to a veteran whose educational assistance allowance is terminated or reduced while he or she is incarcerated in a Federal, State or local prison or jail for reasons other than a felony conviction.

(2) The Veterans Administration will terminate the apportionment of the veteran's educational assistance allowance if the educational assistance allowance is either—

(i) Terminated, or
(ii) Reduced below the amount that would otherwise be payable to a veteran with no dependents.

(3) The Veterans Administration may reduce the apportionment of the veteran's educational assistance allowance if the allowance is reduced below the amount which the veteran would have received had the veteran not been incarcerated but above the amount that would otherwise be payable to a veteran with no dependents. (38 U.S.C. 3107(c))

30. In § 21.4145, paragraphs (a), (b) and (d) are revised and paragraphs (e), (f), (g), (h) and (i) are added so that the added and revised material reads as follows:

§ 21.4145 Veteran-student services.

(a) *Eligibility.* Veterans pursuing full-time programs of education or training under chapter 34 are eligible to receive a work-study allowance. (38 U.S.C. 1685)

(b) *Selection criteria.* Whenever feasible, the Veterans Administration will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Veterans Administration shall consider the following additional selection criteria:

- (1) Need of the veteran to augment his or her educational assistance allowance;
- (2) Availability to the veteran of transportation to the place where his or her services are to be performed;
- (3) Motivation of the veteran; and
- (4) Compatibility of the work assignment to the veteran's physical condition. (38 U.S.C. 1685)

(d) *Rate of payment.* (1) In return for the veteran's agreement to perform services for the Veterans Administration totaling 250 hours during an enrollment period, the Veterans Administration will pay an allowance in an amount equal to the higher of—

- (i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250, or
- (ii) \$625.

(2) The Veterans Administration will pay proportionately less to veterans who agree to perform a lesser number of hours of services. (38 U.S.C. 1685)

(e) *Payment in advance.* The Veterans Administration will pay in advance an amount equal to 40 percent of the total amount payable under the contract. (38 U.S.C. 1685)

(f) *Veteran reduces rate of training.* In the event the veteran ceases to be a full-time student before completing an agreement, the veteran, with the approval of the Director of the Veterans Administration field station, or

designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a full-time student. (38 U.S.C. 1685)

(g) *Veteran terminates training.* (1) If the veteran terminates all training before completing an agreement, the Director of the Veterans Administration field station or designee—

(i) May permit him or her to complete the portion of the agreement represented by the money the Veterans Administration has advanced to the veteran for which he or she has performed no services, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran terminates training. (38 U.S.C. 1685)

(h) *Indebtedness for unperformed service.* (1) If the veteran has received an advance for hours of unperformed service, and the Veterans Administration has evidence that he or she does not intend to perform that service, the advance—

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis of the contract. (38 U.S.C. 1685)

(i) *Survey.* The Veterans Administration will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively. (38 U.S.C. 1685)

31. In § 21.4153, the introductory text of paragraph (c)(4) is reprinted for the convenience of the reader, paragraphs (a), (b), (c) (1), (2), (3) and (4)(ii), the introductory text of paragraph (d) and (d)(6), (e) (1) and (2) and (f) are revised and paragraph (g) is added so that the added and revised material reads as follows:

§ 21.4153 Reimbursement of expenses.

(a) *Expenses will be reimbursed under contract—*(1) *Scope of contracts.* If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, the Veterans Administration will negotiate a contract or agreement with the State or local agency to pay (subject to funding) reasonable and necessary expenses incurred by the State or local agency in—

(i) Determining the qualification of educational institutions and training establishments to furnish programs of education to veterans and eligible persons,

(ii) Supervising educational institutions and training establishments, and

(iii) Furnishing any other services the Veterans Administration may request in connection with the law governing Veterans Administration education benefits.

(2) *Reimbursable supervision.* Supervision will consist of the services required—

(i) To determine that the programs are furnished in accordance with the law and with any other reasonable criteria as may be imposed by the State, and

(ii) To disapprove any programs which fail to meet the law and the established criteria. (38 U.S.C. 1774)

(b) *Reimbursement.* The Chief Benefits Director and the Director, Education Service are authorized to enter into agreements necessary to fulfill the purpose of paragraph (a) of this section. See § 21.4001(b). (38 U.S.C. 212(a))

(c) *Reimbursable expenses. * * **

(1) *Salaries.* Salaries for which reimbursement may be authorized under a contract—

(i) Will not be in excess of the established rate of pay for other employees of the State with comparable or equivalent duties and responsibilities,

(ii) Will be limited to the actual salary expense incurred by the State, and

(iii) Will include the basic salary rate plus fringe benefits, such as social security, retirement, and health, accident, or life insurance, that are payable to all similarly circumstanced State employees. (38 U.S.C. 1774)

(2) *Travel.* (i) Travel expenses for which reimbursement may be authorized under a contract will be limited to—

(A) Expenses allowable under applicable State laws or travel regulations of the State or agency;

(B) Expenses for travel actually performed by employees specified under the terms of the contract and;

(C) Either actual expenses for transportation, meals, lodging and local telephone calls, or the regular State or agency per diem allowance.

(ii) All claims for travel expenses payable under the terms of a contract must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency.

(iii) Reimbursement will be made for expenses of attending out-of-State meetings and conferences only if the Director, Education Service authorizes the travel. (38 U.S.C. 1774)

(3) *Administrative expenses.* The formulas contained in this subparagraph will determine the allowance for administrative expenses for which payment may be authorized. Salary cost is defined in paragraph (c)(1) of this section.

(i) This formula is effective Oct. 1, 1980:

Total salary cost reimbursable	Allowable for administrative expense
\$5,000 or less	\$662
Over \$5,000 but not exceeding \$10,000	\$1,191
Over \$10,000 but not exceeding \$35,000	\$1,191 for the first \$10,000, plus \$1,103 for each additional \$5,000 or fraction thereof.
Over \$35,000 but not exceeding \$40,000	\$7,205
Over \$40,000 but not exceeding \$75,000	\$7,205 for the first \$40,000 plus \$953 for each additional \$5,000 or fraction thereof.
Over \$75,000 but not exceeding \$80,000	\$14,288
Over \$80,000	\$14,288 for the first \$80,000 plus \$833 for each additional \$5,000 or fraction thereof.

(ii) This formula is effective Jan. 1, 1981:

Total salary cost reimbursable	Allowable for administrative expense
\$5,000 or less	\$693
Over \$5,000 but not exceeding \$10,000	\$1,247
Over \$10,000 but not exceeding \$35,000	\$1,247 for the first \$10,000 plus \$1,155 for each additional \$5,000 or fraction thereof.
Over \$35,000 but not exceeding \$40,000	\$7,548
Over \$40,000 but not exceeding \$75,000	\$7,548 for the first \$40,000 plus \$999 for each additional \$5,000 or fraction thereof.
Over \$75,000 but not exceeding \$80,000	\$14,969
Over \$80,000	\$14,969 for the first \$80,000 plus \$872 for each additional \$5,000 or fraction thereof.

(38 U.S.C. 1774(b))

(4) *Subcontracts.* The State approving agency may also be reimbursed for work performed by a subcontractor provided:

(i) The Director, Education Service has approved the subcontract in advance. (38 U.S.C. 1774)

(d) *Nonreimbursable expenses.* The Veterans Administration will not provide reimbursement under reimbursement contracts for:

(6) Expenses of a State approving agency for inspecting, approving or supervising courses when the agency is responsible for establishing, conducting or supervising those courses. (38 U.S.C. 1774)

(e) *Agency operating plan.* * * *

(1) The Veterans Administration will determine personnel requirements for which the Veterans Administration provides reimbursement on the basis of estimated workloads agreed upon between the Veterans Administration and the State agency. Agreements are subject to review and adjustment.

(2) Workloads will be determined upon three factors:

(i) Inspection and approval visits,
(ii) Supervisory visits, and
(iii) Special visits at the request of the Veterans Administration. (38 U.S.C. 1774)

(f) *Contract compliance.* Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Director of the VA field station of jurisdiction determines that the State has failed to comply with the standards or provisions of the law or with the terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the matter will be referred to the Director, Education Service (contracting officer), for review. (38 U.S.C. 1774)

(g) *Contract disputes.* The State approving agency reimbursement contract is subject to the Contract Disputes Act of 1978. Disputes arising under, or relating to, the contract will be resolved in accordance with the disputes article of the contract and with appropriate procurement regulations. (41 U.S.C. 602)

32. In § 21.4154, paragraph (a) is revised as follows:

§ 21.4154 Report of activities.

(a) *State approving agencies must report their activities.* Each State approving agency entering into a contract or agreement under § 21.4153 must submit a monthly report of its activities to the Veterans Administration. (38 U.S.C. 1774)

33. In § 21.4200, paragraphs (g) and (h) are revised and paragraphs (n), (o), (p), (q), (r), (s), (t) and (u) are added so that the added and revised material reads as follows:

§ 21.4200 Definitions.

(g) *Standard class session.* The term means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. A standard class session is not less than 1 hour (or 50-minute period) of academic instruction, 2 hours of laboratory instruction, or 3 hours of workshop training. (38 U.S.C. 1788(c))

(h) *Institution of higher learning.* This term means—

(1) A college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(2) When there is no State law to authorize the granting of a degree, a school which—

(i) Is accredited for degree programs by a recognized accrediting agency, or

(ii) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(3) A hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a post-secondary degree.

(4) An educational institution which—

(i) Is not located in a State,

(ii) Offers a course leading to a standard college degree or the equivalent, and

(iii) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located. (38 U.S.C. 1652)

(n) *Enrollment.* This term means the state of being on that roll, or file of a school which contains the names of active students. (38 U.S.C. 1780(g))

(o) *Pursuit of a program of education.*

(1) This term means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through—

(i) Resident courses,

(ii) Independent study courses,

(iii) Correspondence courses,

(iv) An apprenticeship or other on-the-job training program,

- (v) Flight courses,
- (vi) A farm cooperative course,
- (vii) A cooperative course, or
- (viii) A graduate program of research in absentia.

(2) The Veterans Administration will consider a veteran or eligible person who qualifies under § 21.4138 for payment during an interval or school closing, or who qualifies under § 21.4205 for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing or holiday vacation. (38 U.S.C. 1780(g))

(p) *Enrollment period.* (1) This term means an interval of time during which a veteran or eligible person—

- (i) Is enrolled in an educational institution; and
- (ii) Is pursuing his or her program of education.

(2) This term applies to each unit course or subject in the veteran's or eligible person's program of education. (38 U.S.C. 1780(g))

(q) *Attendance.* This term means the presence of a veteran or eligible person—

- (1) In the class where the approved course is being taught in which he or she is enrolled;

(2) At a training establishment; or

(3) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or eligible person is enrolled and is pursuing a program of education. (38 U.S.C. 1780(g))

(r) *In residence on a standard quarter- or semester-hour basis.* This term means study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout a standard quarter or semester for one quarter- or one semester-hour credit. (38 U.S.C. 1788(c))

(s) *Deficiency course.* This term means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education. (38 U.S.C. 1691(a)(2))

(t) *Remedial course.* This term means a special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech. (38 U.S.C. 1691(a)(2))

(u) *Refresher course.* This term means a course at the elementary or secondary level to review or update material previously covered in a course that has

been satisfactorily completed. (38 U.S.C. 1691(a)(2))

34. In § 21.4201, paragraphs (a), (c), (d), (e)(1) (the introductory text preceding subdivision (i)), (e)(2), (f)(1) (the introductory text preceding subdivision (i)), (f)(2), (g), the introductory text of (h) and (h)(1) and (h)(1)(ii) and (h)(2) are revised and paragraph (e)(4) is removed so that the revised material reads as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* Except as otherwise provided in this section the Veterans Administration shall not approve an enrollment in any course for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the Veterans Administration pursuant to title 38, United States Code. This restriction may be waived in whole or in part. (38 U.S.C. 1673(d))

(c) *Affected courses.* (1) The following courses or programs are exempt from the requirements of paragraph (a) of this section:

- (i) Any farm cooperative course; and
- (ii) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as "nonappropriated sundry fund activities" which are governmental instrumentalities.

(2) The provisions of paragraph (a) of this section apply to the enrollment of a serviceperson in a course leading to a high school diploma, equivalency certificate, or a refresher, remedial or deficiency course, but they do not apply to the enrollment of a veteran in such a course.

(3) Except as provided in paragraph (c)(2) of this section, the provisions of paragraph (a) of this section do not apply to an approved course which—

- (i) Is offered under contract with the Department of Defense,
- (ii) Is on or immediately adjacent to a military base,
- (iii) Has been approved by the State approving agency of the State—

(a) Where the base is located or
(b) Where the parent school is located if the course is offered overseas, and
(iv) Is available only to—

- (a) Military personnel and their dependents, or
- (b) Military personnel, their dependents and civilian employees of a base located in a State, or

(c) Persons authorized by the base commander to attend the course provided the base is located outside the United States.

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans and eligible persons receiving assistance under chapters 31, 32, 34, 35 and 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution. However, the provisions of paragraph (a) of this section will apply to such a course when—

(i) The course is a course of Special Assistance for the Educationally Disadvantaged and a serviceperson enrolls in it, or

(ii) The Director of the Veterans Administration field station of jurisdiction has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course. (38 U.S.C. 1673, 1691(c))

(d) *Applications for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(4) of this section. To obtain an exemption as stated in paragraph (c)(4) of this section schools must submit reports as required in paragraph (f)(1) of this section. (38 U.S.C. 1673)

(e) *Computing the 85-15 percent ratio—(1) Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions, as well as courses or curricula leading to a secondary school diploma or equivalency certificate offered at any branch or extension, must have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a

branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc. (38 U.S.C. 1673(d))

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section the following students will be considered to be nonsupported provided they are not receiving educational assistance from the Veterans Administration:

(i) Students who are not veterans, and are not in receipt of institutional aid.

(ii) All graduate students in receipt of institutional aid.

(iii) Students in receipt of any Federal aid (other than Veterans Administration benefits).

(iv) Undergraduates and non-college degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike. (38 U.S.C. 1673(d))

(f) *Reports.* (1) Schools must submit to the Veterans Administration all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the first term for which the school wants the exemption to apply. If the school is not organized on a term, quarter or semester basis, it shall make that submission no later than 30 days after the beginning of the first calendar quarter for which the school wishes the exemption to apply. A school having received an exemption found in paragraph (c)(4) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Veterans Administration assistance: (38 U.S.C. 1673)

(2) The school must submit all calculations made under paragraph (e)(3) of this section to the Veterans Administration according to these time limits.

(i) If the school is organized on a term, quarter or semester basis, the

calculations must be submitted no later than 30 days after the beginning of each regular school term (excluding summer sessions), or before the beginning date of the next term, whichever occurs first.

(ii) If a school is not organized on a term, quarter or semester basis, reports must be received by the Veterans Administration no later than 30 days after the end of each calendar quarter. (38 U.S.C. 1673)

(g) *Effect of the 85-15 percent ratio on processing new enrollments.* (1) The Veterans Administration will process new enrollments of eligible veterans (and servicepersons where this provision applies to them), in a course on the basis of the school's submission of the most recent computation showing that—

(i) The 85-15 percent ratio is satisfactory, or

(ii) The course is exempt under paragraph (c)(4) of this section.

(2) Except for those enrollments with a beginning date prior to or the same as the date the school completed the most recent computation, no benefits will be paid when that computation establishes that the course—

(i) Neither has a satisfactory 85-15 percent ratio, nor

(ii) Is exempt under paragraph (c)(4) of this section.

(3) If a school fails to submit a timely computation, no benefits will be paid for—

(i) The enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate if the enrollment has beginning dates beyond the expiration of the allowable computation period, or

(ii) The enrollment of a veteran in any course to which the provisions of paragraph (a) of this section apply if the enrollment has beginning dates beyond the expiration of the allowable computation period.

(4) Enrollments with later beginning dates may be processed only after the school certifies that—

(i) The proper ratio has been reestablished for the course, or

(ii) The course is exempt from the requirement under paragraph (c)(4) of this section.

(5) When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment or enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate which is submitted after reestablishment must be individually computed into the ratio to ensure that the 85 percent limitation is not again immediately exceeded. The Veterans Administration will require individual computations until—

(i) The end of the term for which the ratio was reestablished, or

(ii) The end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis. (38 U.S.C. 1673, 1691(c))

(6) Once a student is properly enrolled in a course either before December 1, 1976 or after November 30, 1976, in a course which either meets the 85-15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85-15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving Veterans Administration education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education Service through the Director of the Veterans Administration field station of jurisdiction.

(1) When applying, a school must submit sufficient information to allow the Director, Education Service or the Director of the Veterans Administration field station of jurisdiction, as appropriate, to judge the merits of the request against the criteria shown in this subparagraph. This information and any other pertinent information available to the Veterans Administration shall be considered in relation to these criteria: (38 U.S.C. 1673)

(ii) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of the notification of developing status from the Department of Education, if applicable. Otherwise, the school should submit data sufficient to allow the Director, Education Service, or the Director of the VA field station of jurisdiction, as appropriate, to judge whether the school is similar to officially classified developing institutions according to the criteria and data categories published in chapter VI, part 624, subpart B, Title 34, Code of

Federal Regulations. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met. (38 U.S.C. 1673(d))

(2) If a school disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the Director's recommendation be forwarded to the Director, Education Service for administrative review. (38 U.S.C. 1673(d))

35. In § 21.4202, paragraph (a) is revised as follows:

§ 21.4202 Overcharges; restrictions on enrollments.

(a) *Overcharges.* The Veterans Administration may disapprove a school for further enrollments, when the school charges or receives from a veteran or eligible person tuition and fees that exceed the established charges which the school requires from similarly circumstanced non-veterans enrolled in the same course. See § 21.4207. (38 U.S.C. 1790)

36. In § 21.4203, paragraphs (a) and (b)(1)(i) are revised as follows:

§ 21.4203 Reports—requirements.

(a) *General.* (1) Each educational institution, veteran and eligible person shall report without delay the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved course.

(2) In addition educational institutions must—

(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and

(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(3) Nothing in this section or in any section in Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree. (38 U.S.C. 1780(d), 1784, 1785, 1798)

(b) *Entrance or reentrance.* * * *

(1) * * *

(i) The Director of the Veterans Administration field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1780(a))

37. In § 21.4205, paragraph (c) is revised and paragraph (d) is added so that the added and revised material reads as follows:

§ 21.4205 Absences.

(c) *Reporting.* (1) Educational institutions, training establishments and veterans and eligible persons must report—(i) Each day of absence from scheduled attendance—including Saturday and Sunday if classes are normally scheduled for those days.

(ii) Days when the school is closed for local and school holidays.

(iii) If reported enrollment is on an ordinary school year basis, intervals between terms, quarters or semesters, and

(iv) Days of nonattendance in a farm cooperative course which occur during the prescheduled classroom instruction.

(2) Educational institutions, training establishments and veterans and eligible persons will not report—

(i) Days when the school is closed for a weekend provided classes are not normally scheduled for Saturday or Sunday.

(ii) Days when the school is closed for legal holidays or customary, reasonable vacation periods connected with them which are identified as a holiday vacation on the school approval literature. Generally, the Veterans Administration will interpret a

reasonable period as not more than 1 calendar week at Christmas and 1 calendar week at New Years and shorter periods of time in connection with other legal holidays.

(iii) Days (not to exceed five in any 12-month period) when the institution is not in session because of teacher conferences or teacher training sessions, and

(iv) At the discretion of the Director of the Veterans Administration field station of jurisdiction, days of nonattendance within a certified period of enrollment during which the school is closed under an Executive Order of the President or due to an emergency situation.

(A) If the Director has authorized the nonreporting of days of absence as the result of an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service will decide if absences will continue not to be reported. He or she will base the decision on a full assessment of the strike situation. The Veterans Administration will terminate payment of educational assistance if in the Director's judgment the school closing will not be temporary. (38 U.S.C. 1780(a))

(B) A school which disagrees with a decision made under paragraph (c)(2)(iv) of this section by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1780(a))

(3) 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 paragraph (c)(4) of this section.)

(iii) Divide the total hours of absence for the month (paragraph (c)(3)(ii) of this section) by the average hours of daily attendance (paragraph (c)(3)(i) of this section) to determine the full days of absence to be reported. A fractional day in the result will be dropped if it is one-half day or less and increased to the next whole day if more than one-half day.

(4) 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 1 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.

(5) For a farm cooperative course the absences to be reported by the veteran or eligible person and verified by the school will be those days of non-attendance which occur during a period of the prescheduled classroom instruction.

(d) *Absence accounting for transfer students.* (1) The Veterans Administration will count as absences for the purposes of this paragraph the days included in the interval between consecutive school terms within a school year when a veteran or eligible person, who is pursuing a course not leading to a standard college degree—

(i) Transfers from one approved institution to another, and
(ii) Receives payment for the interval on the basis described in paragraph (d) (2) and (3) of this section.

(2) A veteran or eligible person remains eligible for payment for the interval if—

(i) He or she enrolls in and pursues at the second institution a course which is similar to the course he or she pursued at the first institution, and
(ii) The interval does not exceed 30 days from the termination date of the first institution's school term.

(3) For the purpose of entitlement to payment of the educational assistance allowance, the Veterans Administration considers the veteran or eligible person to be enrolled at the first institution during the interval. (38 U.S.C. 1780(a))

38. Section 21.4206 is revised as follows:

A. By removing the legal citation "38 U.S.C. 1784(b)" and inserting "38 U.S.C. 1784(c)" in paragraphs (a) and (b).

B. By adding paragraph (e) as follows:

§ 21.4206 Reporting fee.

(e) Before payment of a reporting fee the Veterans Administration will require an educational institution to certify that—

(1) It has exercised reasonable diligence in determining whether it or any course offered by it approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapters 34, 35 and 36 of title 38, United States Code; and

(2) It will, without delay, report any failure to meet any requirement to the Veterans Administration. (38 U.S.C. 1784(b))

39. In § 21.4207, the introductory text of paragraph (c) is revised as follows:

§ 21.4207 Failure of school to meet requirements.

(c) *Referral to Central Office by the field station.* The decision will be made by Central Office if:

(38 U.S.C. 1772)

40. In § 21.4208, paragraphs (a) and (b) are revised as follows:

§ 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, Education Service, on matters which are before him or her for final administrative determination under § 21.4201, § 21.4202 or § 21.4207. (38 U.S.C. 1772)

(b) *Composition of panel.* The panel will consist of one staff employee from the office of the Director, Education Service, and two persons who are not employees of the Veterans Administration chosen from a group of consultants selected for that purpose. (38 U.S.C. 1772)

41. In § 21.4209, paragraph (a) is revised as follows:

§ 21.4209 Examination of records.

(a) *Availability of records.* Notwithstanding any other provision of law, educational institutions must make the following records and accounts available to authorized Government representatives:

(1) Records and accounts pertaining to veterans or eligible persons who received educational assistance under chapter 31, 32, 34, 35 or 36, title 38, United States Code, and

(2) Other students' records necessary for the Veterans Administration to ascertain institutional compliance with the requirements of these chapters. (38 U.S.C. 1790)

42. Sections 21.4231 and 21.4232 are revised to read as follows:

§ 21.4231 Educational plan—38 U.S.C. Chapter 35—child.

(a) *Preparation of an educational plan.* (1) An educational plan must be prepared in each case in which educational assistance is requested by or for a child.

(2) The Veterans Administration will provide the assistance of a counseling psychologist if the eligible child or a parent or guardian requests this assistance.

(3) The educational plan—

(i) Must be prepared on a prescribed Veterans Administration form,

(ii) May be submitted and signed by the eligible child if he or she is not a minor, and

(iii) Must be signed by a parent or guardian if the eligible child is a minor.

(4) The Veterans Administration will treat the plan as an integral part of the application. (38 U.S.C. 1720)

(b) *Content of the educational plan.* The educational plan will show—

(1) The objective and program selected,

(2) The school where the child will pursue the program, and

(3) The estimated cost for tuition and fees. (38 U.S.C. 1720)

(c) *Approval of the educational plan.* The Veterans Administration will finally approve the educational plan when the Veterans Administration determines that—

(1) The proposed program constitutes a program of educational as defined in § 21.4230;

(2) The eligible child is not already qualified, by reason of previous education, for the educational, professional, or vocational objective for which the program of education is offered;

(3) The eligible child's proposed educational institution or training establishment is in compliance with all the requirements of chapters 35 and 36, title 38, United States Code, and

(4) The enrollment in or pursuit of the program of education by the eligible child would not violate any provisions of chapter 35 or 36, title 38, United States Code. (38 U.S.C. 1721)

§ 21.4232 Specialized vocational training—38 U.S.C. Chapter 35.

(a) *Eligibility requirements for specialized vocational training.* (1) The Veterans Administration may provide a program of a specialized course of vocational training to an eligible person who—

(i) Is not in need of special restorative training, and

(ii) Requires specialized vocational training because of a mental or physical handicap.

(2) The Vocational Rehabilitation Board will—

(i) Determine whether such a course is in the best interest of the eligible person;

(ii) Assist in developing the program and a suitable educational plan, if the course is in the eligible person's best interest; and

(iii) Deny the application for the program when the course is not in the eligible person's best interest.

(3) The Veterans Administration may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday. (38 U.S.C. 1736)

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

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

43. In § 21.4233, the introductory text of paragraph (c)(1) is reprinted for the convenience of the reader and paragraph (c)(1)(iii) is revised as follows:

§ 21.4233 Combination.

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

(iii) A portion of the credit hours for which the veteran or eligible person is enrolled during any semester or quarter is offered through conventional classroom or laboratory instruction or both. (38 U.S.C. 1673 (c))

44. In § 21.4235, paragraphs (a), (d) and (e) are revised and paragraph (f) is removed so that the revised material reads as follows:

§ 21.4235 Special assistance for the educationally disadvantaged—chapter 34.

(a) *Enrollment.* (1) The Veterans Administration may approve the enrollment of a veteran or eligible serviceperson in an elementary or secondary course of education if—

(i) The veteran or eligible serviceperson has not received a

secondary school diploma or an equivalency certificate, and

(ii) The course is necessary in order for the veteran or eligible serviceperson to receive a secondary school diploma or an equivalency certificate.

(2) The Veterans Administration may approve the enrollment of a veteran or eligible serviceperson in a preparatory, refresher, remedial, deficiency or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue a program of education for which he or she would otherwise be eligible. The eligible serviceperson may not take the course under chapter 34, subchapter V, title 38, United States Code, because the Veterans Administration must make a charge against the serviceperson's entitlement for this type of training. (38 U.S.C. 1691)

(d) *Entitlement charge.* The provisions of § 21.1045 will determine whether a charge will be made against the period of the veteran's entitlement because of enrollment in courses under the provisions of this section. (38 U.S.C. 1690, 1691, 1693)

(e) *Certifications.* (1) Certifications of the serviceperson's or veteran's need for deficiency or remedial courses in basic English language skills and mathematics skills may be made by either—

(i) The service education officer (in the case of a serviceperson),

(ii) A Veterans Administration counseling psychologist in the Vocational Rehabilitation and Counseling Division,

(iii) The educational institution administering the course, or

(iv) The educational institution where the individual has applied for admission.

(2) Certifications of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Which is administering the course which the student is planning to enter, or

(ii) When the student has applied for admission. (38 U.S.C. 1691)

45. Section 21.4236 is revised as follows:

§ 21.4236 Special supplemental assistance (tutorial).

(a) *Enrollment.* A veteran or eligible person may receive supplemental monetary assistance to provide tutorial services if he or she—

(1) Is pursuing a post-secondary educational program on a half-time or more basis at an educational institution, and

(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education. (38 U.S.C. 1692)

(b) *Approval.* The Veterans Administration will grant approval when—

(1) The educational institution certifies that—

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected—

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis. (38 U.S.C. 1692)

(c) *Educational assistance allowance.* In addition to payment of educational assistance allowance at the monthly rates specified in § 21.4136 or 21.4137, the Veterans Administration will authorize the cost of the tutorial assistance in an amount not to exceed—

(1) \$72 per month effective October 1, 1980, and

(2) \$76 per month effective January 1, 1981. (38 U.S.C. 1692(b))

(d) *Entitlement charge.* The Veterans Administration will make no charge against the period of the veteran's entitlement as computed under § 21.1041 or the eligible person's entitlement as computed under § 21.3044. Special supplemental assistance provided under this section will not exceed a maximum of—

(1) \$869 effective October 1, 1980, and

(2) \$911 effective January 1, 1981. (38 U.S.C. 1690, 1692, 1693)

46. In § 21.4237, paragraphs (b), (d) and (e) are revised as follows:

§ 21.4237 Special assistance for the educationally disadvantaged—Chapter 35 spouse or surviving spouse.

(b) *Measurement.* The Veterans Administration will measure remedial, deficiency or refresher courses offered at the secondary school level as provided in §§ 21.4271(c) and 21.4272(k). (38 U.S.C. 1733)

(d) *Entitlement charge.* The provisions of § 21.1045 will determine whether a charge will be made against the period of the entitlement of the spouse or surviving spouse because of enrollment

in courses under the provisions of this section. (38 U.S.C. 1733)

(e) *Certifications.* (1) Certifications of the eligible spouse's or surviving spouse's need for deficiency or remedial courses in basic English language skills and mathematic skills may be made by either—

(i) A Veterans Administration counseling psychologist, in the Vocational Rehabilitation and Counseling Division.

(ii) The educational institution administering the course, or

(iii) The educational institution where the student has applied for admission.

(2) Certification of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Administering the course which the student is planning to enter, or

(ii) Where the student has applied for admission. (38 U.S.C. 1733)

47. In § 21.4250, paragraph (c) is revised as follows:

§ 21.4250 Approval of courses.

(c) *Veterans Administration approval.* (1) The Director Vocational Rehabilitation and Counseling Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under chapter 35.

(2) The Director, Education Service may approve—

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 38 U.S.C. ch. 32, 34 or 35 offered by a school located in the Canal Zone, Guam or Samoa;

(iii) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 38 U.S.C. ch. 32, 34 or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. ch. 36; and

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29, United States Code as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one

State. (38 U.S.C. 1641, 1676, 1723, 1772(b), 1772(c))

48. In § 21.4251, the introductory text of paragraphs (a) and (f) are reprinted for the convenience of the reader, paragraphs (a) (1), (5) and (6), (c), (d) and (f) (1) and (2) are revised. In addition the present paragraph (g) is removed and paragraph (h) is redesignated (g) and the introductory text and subparagraph (3) (the introductory portion preceding subdivision (i)) and subparagraph (4) are revised as follows:

§ 21.4251 Period of operation of course.

(a) *General.* A course offered by a school other than a job training establishment 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 including the flying clubs which are the subject of § 21.4201(c)(1)(ii); (38 U.S.C. 1789(b))

(5) Any course for the educationally disadvantaged offered by a proprietary nonprofit educational institution, at the principal or branch location, when the institution offering the course has been in operation for more than 2 years; or

(6) Any course—

(i) Offered by an educational institution under a contract with the Department of Defense,

(ii) Given on, or immediately adjacent to, a military base,

(iii) Available only to active duty military personnel or their dependents or both, and

(iv) Approved by the State approving agency—

(A) of the State in which the base is located, or

(B) Of the State having jurisdiction over the educational institution offering the course when the course is a degree course being taught outside the United States. See paragraph (f) of this section for specific additional requirements as to branch location schools. A course is being given at a location immediately adjacent to a military base if the facilities are clearly neighboring to the base or are in close proximity to it and must be easily accessible to active duty personnel. The location must be under effective supervision of the base military authorities. The Director, Education Service or the Director of the Veterans Administration field station of jurisdiction pursuant to paragraph (g) of this section may waive the requirements

of this subparagraph in whole or in part, when such a waiver is in the interest of the veteran and the Federal Government. (38 U.S.C. 1789(b))

(c) *Course similar in character.* A course is 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 at least 2 years. When the State approving agency approves a course which has not been in operation for at least 2 years, as similar in character to a course which has been in operation for at least 2 years, the State approving agency will furnish the Veterans Administration with—

(1) A copy of the approval, and

(2) The basis for its conclusion that the courses are similar. (38 U.S.C. 1789)

(d) *Move to new location.* A school has moved to another location in the same general locality when—

(1) The new location is within normal commuting distance of the original location, and

(2) The school—

(i) Has essentially the same faculty and student body, and

(ii) Offers the same courses. (38 U.S.C. 1789)

(f) *Subsidiary branch or extension.* Notwithstanding the provisions of paragraph (a)(1), (2), (3) or (4) of this section the 2-year period of operation requirement will apply to courses at subsidiary branches or extensions as provided in the following subparagraphs:

(1) Unless the Director, Education Service or the Director of the appropriate Veterans Administration field station waives the 2-year period of operation requirement in whole or in part (as provided in paragraph (g) of this section), it will apply to any course offered by a branch or extension of any of the following institutions:

(i) A public or other tax-supported institution where the branch or extension is located outside the area of the taxing jurisdiction providing support to the institution,

(ii) A proprietary profit or proprietary nonprofit educational institution where the branch or extension is located beyond normal commuting distance of the institution, or

(iii) A proprietary profit educational institution, even if the branch or extension is located within normal commuting distance.

(2) A course for which such a waiver is granted will be exempt from the 2-

year period of operation requirement only if it also satisfies the provisions of either paragraph (a)(1), (2), (3) or (4) of this section. (38 U.S.C. 1789(b))

(g) *Waivers.* A school may apply to the appropriate Veterans Administration field station Director for a waiver of the provisions of paragraph (a)(6) or (f) of this section. The Veterans Administration field station Director may grant a waiver only when the conditions specified in this paragraph have been met. If the Director denies a waiver, he or she shall inform the school that the request is denied, and that the school may request a review by the Director, Education Service. A request for review will be forwarded to the Director, Education Service with the field station Director's recommendation. (38 U.S.C. 1789(b))

(3) The Director of the Veterans Administration field station of jurisdiction may exercise authority found in paragraph (f) of this section to allow a waiver of the requirements of paragraph (f)(1) of this section. He or she may grant such a waiver when he or she finds that:

(4) A school, which disagrees with a decision made under this paragraph by a Director of a Veterans Administration field station, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the Veterans Administration field station where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a Veterans Administration field station. (38 U.S.C. 1789)

§ 21.4251 [Amended]

49. The cross reference following § 21.4251 is revised to read as follows: "Courses offered at subsidiary branches or extensions. See § 21.4266."

50. In § 21.4252, paragraphs (g) and (h) are revised as follows:

§ 21.4252 Courses precluded.

(g) *Vocational courses—chapters 34, 35 and 36.* (1) Except as specified in paragraph (g)(2) and (3) of this section the Veterans Administration shall not approve a veteran's or eligible person's enrollment in any course with a vocational objective unless the veteran or eligible person, or the institution offering the course, establishes that at

least one-half of the persons completing the course during the preceding 2-year period have attained employment for an average of 10 hours per week in the occupational category for which the course is designed to provide training. There shall be excluded from this calculation the number of persons who—

(i) Pursued the course with assistance under title 38, United States Code, while serving on active duty, or

(ii) Are unavailable for employment.

(2) The provisions of paragraph (g)(1) of this section do not apply to an enrollment in a course in a particular year if—

(i) The total number of eligible veterans and eligible persons enrolled in the educational institution offering the course during the 2-year period preceding that year did not exceed 35 percent of the total enrollment in the educational institution during that 2-year period, and

(ii) The course met the requirements of paragraph (g)(1) of this section for any 2-year period ending after October 16, 1980.

(3) An educational institution desiring a waiver from the application of the provisions of paragraph (g)(1) of this section may apply to the appropriate State approving agency. The State approving agency will recommend to the Director of the Veterans Administration field station of jurisdiction whether or not the Director should grant a waiver. The State approving agency will consider all evidence of record including whether—

(i) The total number of eligible veterans and eligible persons enrolled in the educational institution during the 2-year period preceding the request ever exceeded 35 percent of the total enrollment in the educational institution during that period;

(ii) The total number of eligible veterans and eligible persons enrolled during the 2 years preceding the request ever exceeded 20 percent of the total enrollment in the course during that period;

(iii) The estimated cost of complying with the requirements of paragraph (g)(1) of this section exceeds \$22 times the number of eligible veterans and eligible persons enrolled in the course during the 2-year period; and

(iv) The institution collects, or would collect, data on the employment of all graduates solely or principally to compile an employment report to satisfy the requirements of paragraph (g)(1) of this section.

(4) The Director of the Veterans Administration field station of jurisdiction shall consider the State

approving agency's recommendation and all other evidence of record in determining whether to grant or deny the request for a waiver.

(5) If an educational institution disagrees with a field station Director's determination concerning a waiver, it may request that the application along with the field Director's determination be forwarded to the Director, Education Service for administrative review.

(6) An exemption under paragraph (g)(2) of this section is revoked automatically at any time the total number of eligible veterans and eligible persons enrolled in the educational institution exceeds 35 percent of the total enrollment. If the educational institution is organized on a term, quarter or semester basis and the exemption is revoked, the beginning date of the 2-year period will be the first day of the term, quarter or semester during which the total number of eligible persons exceeded 35 percent of the total enrollment in the educational institution. If the educational institution is not organized on a term, quarter or semester basis, the beginning date of the 2-year period will be the first day of the calendar quarter during which the total number of eligible veterans and eligible persons exceeded 35 percent of the total enrollment in the educational institution.

(7) A waiver under paragraph (g)(3) of this section is revoked automatically at any time the total number of eligible veterans and eligible persons enrolled in the educational institution exceeds 35 percent of the total enrollment, or the total number of eligible veterans and eligible persons enrolled in the course for which a waiver has been granted exceeds 20 percent of the total enrollment in the course.

(i) If the educational institution is organized on a term, quarter or semester basis, the beginning date of the 2-year period will be the first day of the term, quarter or semester during which—

(A) The number of eligible veterans and eligible persons enrolled in the educational institution first exceeded 35 percent of the educational institution's total enrollment; or

(B) The number of eligible veterans and eligible persons enrolled in the course for which a waiver has been granted first exceeded 20 percent of the total enrollment in the course, whichever is earlier.

(ii) If the educational institution is not organized on a term, quarter or semester basis, the beginning date of the 2-year period will be the first day of the calendar quarter during which—

(A) The number of eligible veterans and eligible persons enrolled in the educational institutions first exceeded 35 percent of the educational institution's total enrollment; or

(B) The number of eligible veterans and eligible persons enrolled in the course for which a waiver has been granted first exceeded 20 percent of the total enrollment in the course, whichever is earlier. (38 U.S.C. 1673(a), 1723(a))

(h) *Erroneous, deceptive, misleading practices.* (1) The Veterans' Administration will not approve an enrollment in any course offered by an institution which uses advertising, sales, or enrollment practices which are erroneous, deceptive, or misleading by actual statement, omission, or intimidation. As provided by section 1796, title 38, United States Code, the Veterans' Administration shall use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement—

(i) To carry out investigations, and
(ii) To make determinations under this paragraph.

(2) To ensure compliance, any institution offering courses approved for the enrollment of veterans or eligible persons shall maintain a complete record of all advertising, sales, or enrollment materials (and copies of each) used by or on behalf of the institution during the preceding 12-month period. This record shall be available for inspection by the State approving agency or the Veterans' Administration. These materials shall include, but are not limited to—

- (i) Any direct mail pieces,
- (ii) Brochures,
- (iii) Printed literature used by sales people,
- (iv) Films, video cassettes and audio tapes disseminated through broadcast media,
- (v) Material disseminated through print media,
- (vi) Tear sheets,
- (vii) Leaflets,
- (viii) Handbills,
- (ix) Fliers, and
- (x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution. (38 U.S.C. 1796)

51. In § 21.4253, paragraph (c) is revised as follows:

§ 21.4253 Accredited courses.

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of

Education as required by 38 U.S.C. 1775(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of the course specifically accredited and approved by the agency or association. (38 U.S.C. 1775)

52. Section 21.4260 is revised as follows:

§ 21.4260 Courses in foreign countries.

(a) *Approval of postsecondary courses in foreign countries.* (1) The Veterans' Administration may approve a postsecondary course offered by an educational institution not located in a State when—

(i) The educational institution offering the course is an institution of higher learning, and

(ii) The course leads to a standard college degree, or its equivalent.

(2) For the purpose of this paragraph, a degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution of higher learning in that country. (38 U.S.C. 1676)

(b) *Approval of enrollments in foreign courses.* (1) Except as provided in paragraph (b)(2) of this section the Veterans' Administration will approve the enrollment of a veteran or eligible person in a course offered by an educational institution not located in a State when—

(i) The veteran or eligible person meets the eligibility and entitlement requirements of §§ 21.1040 through 21.1045, 21.3040 through 21.3046 or 21.5040 and 21.5041, as appropriate;

(ii) The veteran's or eligible person's program of education meets the requirements of § 21.4230 or § 21.5230 as appropriate; and

(iii) The course meets the requirements of this section and all other applicable VA regulations.

(2) The Veterans' Administration may deny or discontinue the payment of educational assistance allowance to a veteran or eligible person pursuing a course in an institution of higher learning not located in a State when the Veterans' Administration finds that the veteran's or eligible person's enrollment is not in the best interests of the veteran, eligible person or the Federal Government. (38 U.S.C. 1676)

53. In § 21.4263, the introductory text of paragraph (i) is revised as follows:

§ 21.4263 Flight training—38 U.S.C. Chapter 34, Chapter 32.

(i) *Hourly limitations.* A flight course approved pursuant to paragraph (h)(3) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an identified vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraph (i) (1) through (3) of this section. Flight instruction may never be substituted for ground training. The Veterans' Administration may pay veterans for hours beyond the hours approved only when permitted by the school's standards of progress. (38 U.S.C. 1652(b))

54. In § 21.4270, the introductory text of paragraph (b) is revised as follows:

§ 21.4270 Measurement of courses.

(b) Collegiate graduate, professional and on-the-job training courses shall be measured as stated in this table. This table shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and class sessions mentioned in this table mean clock hours and class sessions per week. (38 U.S.C. 1682, 1732, 1777, 1787, 1788)

55. In § 21.4272, paragraphs (d), (e), (f) and (g) are revised and paragraphs (h), (i), (j) and (k) are added so that the added and revised material reads as follows:

§ 21.4272 Collegiate undergraduate; credit-hour basis.

(d) *Course measurement; general.* When an undergraduate course qualifies for credit-hour measurement, the Veterans' Administration will measure it according to the table contained in § 21.4270(b). (38 U.S.C. 1788)

(e) *Course measurement; normal method.* The Veterans' Administration will use the table in § 21.4270(b) for measurement of a collegiate undergraduate course without adjusting the credit hours assigned by a school when the course is one of the following:

(1) A course offered in residence on a standard quarter- or semester-hour basis.

(2) A work-experience course meeting the requirements of § 21.4265(f).

(3) A course of student teaching.

(4) That portion of a cooperative course consisting of school instruction if the veteran or eligible person elects not to receive educational assistance for the portion consisting of training in a business or industrial establishment.

(5) A course involving flight training.

(6) A course which—

(i) Requires the pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks.

(ii) Requires monthly pursuit of a total number of standard class sessions equal to the number of class sessions that would result if the course required one standard class session per week for each credit hour.

(iii) Is considered by the institution offering it to be fully equivalent to a course described in paragraph (e)(1) of this section including—

(A) The payment of tuition and fees

(B) The awarding of academic credit for the purpose of meeting graduation requirements, and

(C) The transfer of credits to a course meeting the provisions of paragraph (e)(1) of this section.

(iv) Would qualify as a course under paragraph (e)(1) of this section except that it does not have weekly class instruction, and

(v) Together with all other similar courses offered by the educational institution, has an enrollment representing less than 50 percent of the persons at that educational institution receiving educational assistance under chapter 31, 32, 34, 35 or 36, title 38, United States Code. (38 U.S.C. 1788)

(f) *Course measurement; insufficient standard class sessions.* The Veterans' Administration will measure by the week any collegiate undergraduate course offered in residence which is not listed in paragraph (e) of this section.

(1) When a course is offered over a standard quarter or semester as defined in § 21.4200(b) and includes weeks with at least one regularly scheduled, standard class session for each credit hour, the Veterans' Administration will use the table in § 21.4270(b) without adjustment when determining the training time for those weeks.

(2) When a course includes one or more weeks with more than one regularly scheduled class for every 2 credit hours, but less than one regularly scheduled class session for each credit hour, the Veterans' Administration will determine the training time for those weeks in one of two ways:

(i) The Veterans' Administration will determine training time for the week by using the table in § 21.4270(b) without adjustment when the course requires a level of educational pursuit which approximates, quantitatively and qualitatively, the level required by a similar course offered on a standard quarter- or semester-hour basis. In making this determination the Veterans' Administration will consider whether—

(A) The published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-hour basis, or

(B) The student is required to complete in place of class time such things as papers to be written, extra books to be read for the course, and additional projects to be completed.

(ii) If measurement as described in paragraph (f)(2)(i) of this section is not in order, the Veterans Administration will—

(A) Determine the number of standard class sessions for the week.

(B) Drop any fractions of a standard class session, and

(C) Consider the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(b) to determine training time for the week.

(3) If the course includes one or more weeks with at least one regularly scheduled class session, but no more than one regularly scheduled class session for every 2 credit hours, the Veterans Administration will measure the training time for those weeks by—

(i) Determining the number of standard class sessions for the week,

(ii) Dropping any fractions of a standard class session, and

(iii) Considering the standard class sessions to be the same as credit hours for the purpose of using the table in § 21.4270(b) to determine training time for the week. (38 U.S.C. 1788(b))

(g) *Course measurement; nonstandard terms.* (1) When a term is not a standard semester or quarter as defined in § 21.4200(b), the Veterans Administration will determine the equivalent for full-time training by—

(i) Multiplying the credits to be earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and

(ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks for this formula the Veterans Administration will—

(i) Divide the number of days in the term by 7,

(ii) Disregard a remainder of 3 days or less, and

(iii) Consider 4 days or more to be a whole week.

(3) The quotient resulting from the use of the formula is called equivalent credit hours. The Veterans Administration

treats equivalent credit hours as credit hours for measurement purposes. If there is at least one regularly scheduled standard class session per equivalent credit hour each week, the Veterans Administration will use the number of equivalent credit hours to compute educational assistance allowance using the criteria of § 21.4270(b) or the criteria of footnote 2 to that paragraph, whichever is appropriate. If a week contains less than one standard class session per equivalent credit hour, the Veterans Administration will determine training time according to the provisions of paragraph (f)(2) of this section. (38 U.S.C. 1788(b))

(h) *Course measurement; independent study.* The Veterans Administration shall measure a course or subject offered solely by independent study as follows:

(1) If the educational institution evaluates the course or subject in semester or quarter hours of credit and prescribes a period for completion, the course shall be measured as less than one-half but more than one-quarter time when the semester hours per term or equivalent are four or more, and measured as one-quarter time or less for 1 through 3 semester hours per semester or equivalent.

(2) If the educational institution does not evaluate the independent study program in standard semester or quarter hours or the equivalent, independent study shall be measured as less than one-half but more than one-quarter time training. (38 U.S.C. 1682(e))

(i) *Course measurement; combined independent study—resident training.*

(1) If a veteran or eligible person pursues independent study concurrently with resident training under chapter 34 or 35, title 38, United States Code, the Veterans Administration shall determine training time as follows:

(i) If the independent study credit hours the veteran or eligible person is pursuing would equal half-time or more, according to the table in § 21.4270(b), the Veterans Administration shall convert them to the highest number of hours considered to be less than half-time training. If the independent study is not measured on a credit-hour basis, the Veterans Administration will assign a credit-hour evaluation to independent study based on the highest number of credit hours considered to be less than half-time training.

(ii) The Veterans Administration will add the number of independent study credit hours as determined in paragraph (i)(1)(i) of this section to the number of hours of resident training. The hours of resident training will be either credit

hours or hours based on the number of standard class sessions as required by paragraph (e) or (f) of this section, as appropriate.

(iii) The Veterans Administration will use the total hours computed in paragraph (i)(1)(ii) of this section to determine the training time based upon the measurement criteria found in § 21.4270(b).

(2) In applying the procedure outlined in paragraph (i)(1) of this section when the veteran or eligible person pursues a course or subject of independent study and resident training sequentially, as described in § 21.4280(g)(2), the Veterans Administration will treat that course or subject as—

(i) Independent study during any week in which the course or subject meets the definition of independent study found in § 21.4280(c), and

(ii) Resident training during weeks in which regularly scheduled classroom sessions meet. (38 U.S.C. 1682(e))

(j) *Course measurement; credit course taken under special circumstances.* If a course is acceptable for credit, but the educational institution does not award credit to the veteran or eligible person because he or she has not met college entrance requirements or for some other valid reason, the Veterans Administration will measure the course as though it were pursued for credit, provided the veteran or eligible person performs all of the work prescribed for other students who are enrolled for credit. (38 U.S.C. 1788(b))

(k) *Course measurement; noncredit courses.* (1) Except for courses leading to a secondary school diploma or equivalent, the Veterans Administration will measure noncredit courses given by an institution of higher learning on a quarter- or semester-hour basis if the institution considers them to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the institution of higher learning.

(2) The Veterans Administration shall measure other noncredit courses under the appropriate criteria of § 21.4270.

(3) Where a school requires a veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet scholastic or entrance requirements, the school will certify the credit-hour equivalent of the noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The Veterans Administration will measure the course on the total of the credit hours and credit-hour equivalency. (38 U.S.C. 1788)

56. Section 21.4277 is revised as follows:

§ 21.4277 Discontinuance—unsatisfactory progress and conduct.

(a) *Satisfactory pursuit of program.* Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Veterans Administration. Progress is unsatisfactory if the veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending. (38 U.S.C. 1674 and 1724)

(b) *Satisfactory conduct.* Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See § 21.4253. (38 U.S.C. 1674 and 1724)

§ 21.4277 [Amended]

57. The cross reference immediately following § 21.4277 is revised to read "Reports—requirements. See § 21.4203."

58. In § 21.4279, paragraph (b)(1) is revised as follows:

§ 21.4279 Combination correspondence—residence program.

(b) * * *

(1) The charges for that portion of the program pursued exclusively by correspondence will be in accordance with § 21.4136(a) with 1 month of entitlement charged for each \$327 of cost reimbursed, effective October 1, 1980; and 1 month of entitlement charged for each \$342 of cost reimbursed, effective January 1, 1981. (38 U.S.C. 1786(a))

59. Section 21.4280 is revised as follows:

§ 21.4280 Independent study leading to a standard college degree.

(a) *General.* A veteran or eligible person may receive an educational assistance allowance for pursuit of an independent study course or subject or for a course or subject which combines

independent study with resident training. However, a veteran or eligible person may not receive an educational assistance allowance for pursuing a course or subject offered through open-circuit television unless he or she is enrolled concurrently in resident training. (38 U.S.C. 1673, 1682, 1733)

(b) *Scope of independent study.* The provisions of this section do not apply to a veteran or eligible person who is enrolled in—

(1) A cooperative course as defined in § 21.4233(a).

(2) A farm cooperative course, or

(3) A course approved as a correspondence course. (38 U.S.C. 1682, 1732)

(c) *Definition of independent study.* The Veterans Administration considers a course or subject to be offered entirely through independent study when the course or subject—

(1) Leads to a standard college degree;

(2) Consists of a prescribed program of study with provision for interaction either by mail, telephone or personally between the student and the regularly employed faculty of the university or college;

(3) Is offered without any regularly scheduled, conventional classroom or laboratory sessions; and

(4) Is not a course listed in paragraph (b), (e) or (f) of this section. (38 U.S.C. 1682, 1732)

(d) Undergraduate resident training.

(1) The Veterans Administration considers the following courses to be resident training during the entire period a veteran or eligible person is pursuing them:

(i) A course or subject which meets the requirements for resident training found in § 21.4265(f);

(ii) A course or subject, leading to a standard college degree, offered in residence on a standard quarter- or semester-hour basis;

(iii) An undergraduate course or subject which requires regularly scheduled, weekly classroom or laboratory sessions, but does not require them in sufficient number to meet the provisions of paragraph (d)(1)(ii) of this section; or

(iv) An undergraduate course or subject leading to a standard college degree which—

(A) Would qualify as a course under paragraph (d)(1)(ii) of this section except that it does not have weekly class instruction.

(B) Requires pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks.

(C) Requires monthly pursuit of a total number of standard class sessions

which, during that month, is required by a course meeting the provisions of paragraph (d)(1)(ii) of this section.

(D) Is considered by the institution offering it as fully equivalent to a course described in paragraph (d)(1)(ii) of this section including the payment of tuition and fees; the awarding of academic credit for the purpose of meeting graduation requirements, and the transfer of credits to a course meeting the provisions of paragraph (d)(1)(ii) of this section and;

(E) Together with all other similar courses offered by the educational institutions, has an enrollment representing less than 50 percent of persons at that institution receiving educational assistance under either chapter 31, 32, 34, 35 or 36, title 38, United States Code.

(2) The Veterans Administration will consider any undergraduate course not listed in paragraph (b) or (f) or (d)(1) of this section to be a resident course during any week when there are regularly scheduled standard class sessions for the course. (38 U.S.C. 1682, 1732, 1788)

(a) *Graduate resident training.* Graduate resident training is a course which—

(1) Is offered through regularly scheduled, conventional classroom or laboratory sessions; or

(2) Consists of research necessary for the preparation of the student's—

- (i) Master's thesis,
- (ii) Doctoral dissertation, or
- (iii) A similar treatise which is a prerequisite to the degree being pursued. (38 U.S.C. 1682, 1732)

(f) *Other training.* The following types of training are considered resident training by the Veterans Administration for measurement and payment when the student combines them with independent study:

- (1) A course of student teaching,
- (2) An undergraduate course leading to a standard college degree which includes flight training, and

(3) A graduate course consisting of research in absentia. Research in absentia is research pursued off the campus of the educational institution which meets the requirements of paragraph (e)(2) of this section. (38 U.S.C. 1682, 1732)

(g) *Independent study-resident training.* A veteran or eligible person is in independent study-resident training if he or she—

- (1) Is enrolled concurrently in one or more courses or subjects offered by independent study as defined in paragraph (c) of this section and one or

more courses or subjects offered by resident training as listed in paragraphs (d), (e) and (f) of this section or

(2) Is enrolled in one or more undergraduate subjects which—

- (i) Do not meet the requirements of paragraph (d)(1) of this section,
- (ii) Have some weeks when standard class sessions are scheduled; and
- (iii) Consists of independent study as defined in paragraph (c) of this section during those weeks when there are no regularly scheduled, standard class sessions. (38 U.S.C. 1682, 1732)

(h) *Approval of independent study.* A course or subject offered through independent study or independent study-resident training must be approved as independent study or independent study-resident training by the State approving agency. (38 U.S.C. 1682, 1732)

60. In § 21.4500, the introductory text of paragraphs (d)(2), (e), and (f)(2) are reprinted for the convenience of the reader, paragraphs (d) (1) and (2) (i)(d) and (ii), (e) (4) and (6), (f) (1) and (2)(iii) and (h) are revised as follows:

§ 21.4500 Definitions.

(d) *Loan period.* (1) The Veterans Administration will make loans normally for a quarter, semester, summer term or two consecutive quarters.

(2) The Veterans Administration may grant a loan to a veteran or eligible person attending a course not organized on a term, quarter or semester basis if the course requires at least 6 months at the full-time rate to complete. A loan will be granted for not more than 6 months at a time. (38 U.S.C. 1798)

(c) The default rate on all loans ever made to students pursuant to loan programs administered by the Department of Education does not exceed 5 percent or five cases, whichever is greater. (38 U.S.C. 1798(c))

(ii) If a school disagrees with a decision of a Director of a Veterans Administration field station, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education Service. The Director of the Veterans Administration field station shall forward all requests to the Director, Education Service, who shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Veterans Administration field station, but shall not grant a waiver if the requirements of

paragraph (d)(2)(i) of this section are not met. (38 U.S.C. 1798(c))

(e) *Total amount of financial resources.* This term means the total of the following: * * *

(4) Educational assistance received or receivable for the loan period by the veteran or other eligible person under section 1631, 1661, or subchapter II of chapter 35, title 38, United States Code, which applies solely to the veteran or eligible person. This amount shall be exclusive of an education loan. (38 U.S.C. 1798(b))

(6) Veterans Administration work-study allowance received or receivable by the veteran under section 1685, title 38, United States Code. (38 U.S.C. 1798(b))

(f) *Actual cost of attendance.* (1) This term means—

(i) Actual charge per student for tuition, fees, and books.

(ii) An allowance for commuting. (This allowance will be based on 22.5 cents per mile for distances which shall not exceed normal commuting distance).

(iii) An allowance for other expenses reasonably related to attendance at the institution at which the veteran or other eligible person is enrolled, and

(iv) A room and board allowance.

(2) The room and board allowance shall be determined as follows: * * *

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the veteran or eligible person for room and board or the amount the veteran or eligible person would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board, whichever is the lesser. (38 U.S.C. 1798(b))

(h) *Annual adjusted effective income.* This income shall include:

(1) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Veterans Administration. This includes income from sources such as Veterans Administration compensation and pension, disability retirement, unemployment compensation, welfare payments, social security benefits, etc.

(2) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is

received by the Veterans Administration, less:

- (i) Authorized deductions for exemptions;
- (ii) Itemized or standard deduction, whichever is greater;
- (iii) Mandatory withholdings such as Federal and State income taxes, social security taxes, etc. (38 U.S.C. 1798(b))

61. In § 21.4501, the introductory text of paragraph (d) is reprinted for the convenience of the reader, paragraphs (c)(2) (the introductory text preceding subdivision (i)) and (d)(1) are revised as follows:

§ 21.4501 Eligibility.

(c) *Additional criteria for eligible veterans, spouses and surviving spouses not eligible to receive educational assistance allowance.*

(2) For the purpose of this paragraph (c)(2) the Veterans Administration shall consider a veteran who is enrolled in a flight training course to be enrolled in a program of education on a full-time basis. A loan shall be granted if the eligible veteran, spouse or surviving spouse meets the eligibility criteria found in paragraph (a) of this section and if he or she: (38 U.S.C. 1798)

(d) *Exclusions.* No veteran or other eligible person shall be authorized an education loan who:

- (1) Is pursuing a program of correspondence, flight training for which the veteran is being reimbursed by the Veterans Administration at the 90 percent rate, apprenticeship, or other on-job training, or (38 U.S.C. 1798)

62. In § 21.4502, paragraphs (a) and (b) (1) and (4) are revised as follows:

§ 21.4502 Applications.

(a) *General.* An eligible veteran or other eligible person shall make an application for an education loan in the manner prescribed and upon the forms prescribed by the Veterans Administration. The Veterans Administration must receive the application no later than the last date of the term, quarter, semester, or 6-month period to which all or part of the loan will apply. The application shall be certified by the school as to the date required from the school by the Veterans Administration. (38 U.S.C. 1671)

(b) *Information.*

(1) A statement of nontaxable income for the student for the current tax year in which the application is received by the Veterans Administration; as well as

a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Veterans Administration less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, social security taxes, etc. (38 U.S.C. 1798(b))

(4) The amount of reasonably anticipated expenses for room and board to be expended by the veteran or other eligible person during the period for which the loan is sought, including a reasonable amount, not to exceed 22.5 cents per mile, for commuting normal distances to classes if the student does not reside on campus. Applications may also provide the Veterans

Administration with a statement of the amount of charges for room and board which the school would have made had the school provided the veteran or eligible person with room and board. If the school does not provide room and board, the application may provide the Veterans Administration with a statement of charges for room and board which the veteran or eligible person would have received had he or she been provided room and board at the nearest State college or State university which provides room and board. (38 U.S.C. 1798(b))

63. In § 21.4503, paragraph (b) is revised as follows:

§ 21.4503 Determination of loan amount.

(b) *Amount.* A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(1) If the costs exceed the available resources by \$50 or less no loan shall be granted.

(2) The aggregate of the amounts any veteran or eligible person may borrow for an education loan may not exceed \$2,500 in any one academic year. It also may not exceed an amount determined by multiplying the number of months of educational assistance allowance to which the veteran or eligible person is entitled (or would be entitled were it not for the expiration of his or her delimiting period) under section 1661 or subchapter II of chapter 35, title 38, United States Code, on the date he or she commences training during the loan period times—

(i) \$327, effective October 1, 1980, for eligible persons and veterans enrolled in

a course other than a flight training course.

(ii) \$342, effective January 1, 1981, for eligible persons and veterans enrolled in a course other than a flight training course.

(iii) \$302, effective October 1, 1980, for veterans enrolled in a flight training course, and

(iv) \$317, effective January 1, 1981, for veterans enrolled in a flight training course. (38 U.S.C. 1798(b))

(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than 6 months. (38 U.S.C. 1798)

(4) If the loan is a second or subsequent loan for the same flight course, the Veterans Administration will reduce the loan by an amount equal to the amount of the previous loans granted for the course less the actual charges incurred by the veteran during the previous loan periods. (38 U.S.C. 1798)

(5) If the loan is for a flight course and the loan period begins before the ending date of the veteran's prior loan period, the Veterans Administration will reduce the loan by an amount equal to the amount of the prior loan less the amount the prior loan would have been had the Veterans Administration known the actual ending date of the veteran's prior flight course at the time the Veterans Administration calculated the loan. (38 U.S.C. 1798)

(6) The Veterans Administration shall pay the following maximum amounts for these loan periods:

- (i) \$1,250 for any semester.
- (ii) \$830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.
- (iii) \$1660 for two consecutive quarters.

(iv) \$270 per month for a course not leading to a standard college degree if less than 6 months long.

(v) \$1660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months long.

(vi) \$270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months long. (38 U.S.C. 1798(b))

(7) No amount authorized will be paid by the Veterans Administration until the veteran or other eligible person is

certified as being enrolled and actually pursuing the course.

(8) An eligible veteran or other eligible person may receive more than one loan covering separate loan periods subject to paragraph (b) (3) and (9) of this section.

(9) If the veteran or other eligible person has a material change in economic circumstances subsequent to the original application for a loan, he or she may reapply for an increase in an authorized loan or for a loan, if otherwise qualified, if no loan was originally granted. However, the Veterans Administration will not decrease or revoke a loan once granted, absent fraud in the application.

64. In § 21.4504, the introductory text of paragraphs (a) and (a)(3) are reprinted for the convenience of the reader, paragraphs (a)(3)(ii) and (b) are revised as follows:

§ 21.4504 Promissory note.

(a) *General.* The agreement by the Veterans Administration to loan money pursuant to section 1798, title 38, United States Code, to any eligible veteran or eligible person shall be in the form of a promissory note which shall include:

(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student and ending:

(ii) For loans of less than \$600 1 year and 7 months after such date for the first \$50 of the loan plus 1 additional month for each additional \$5 of the loan. For loan repayment purposes the Veterans Administration considers a flight student to have ceased to be at least a half-time student when he or she fails to complete at least 10 hours of training in any 3-month period. (38 U.S.C. 1798)

(b) *Interest.* The promissory note shall advise the student that the loan shall bear interest on the unpaid balance of the loan at a rate comparable to, but not in excess of, the rate of interest charged students at such time on loans insured by the Secretary of Education.

Department of Education, under part B of title IV of the Higher Education Act of 1965. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount. (38 U.S.C. 1798)

§ 21.4506 [Amended]

65. Section 21.4506 is amended by removing the reference "§ 21.1045(h)"

and inserting the reference "21.1045(j)" in paragraph (f).

[FR Doc. 83-22501 Filed 8-19-83; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 5-1

[APD 2800.2 CHGE 31]

Construction Progress Payments—Withholding Funds

AGENCY: Office of Acquisition Policy, General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration Procurement Regulations (GSPR), Chapter 5, are amended to implement the Office of Procurement Policy (OFPP) Policy Letter 83-1, date 5-6-83, (48 FR 2 283, 5-20-83). The policy letter provides uniform policy guidance regarding the retention or withholding of funds from progress payments made under Federal construction contracts. The intended effect is to implement the OFPP policy by requiring that funds not be routinely withheld on contracts for construction which are on or ahead of schedule and are otherwise substantially in compliance with the contract requirements.

EFFECTIVE DATE: August 11, 1983

FOR FURTHER INFORMATION CONTACT: Richard H. Hopf, Director, Office of GSA Acquisition Policy and Regulations, (202-566-1224).

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Part 5-11

Administrative practice and procedure, Construction progress payments, Government procurement, Labor surplus areas, Recovered material, Responsible respective contractors, and Small businesses.

41 CFR Part 5-1 is amended by revising § 5-1.371 to read as follows:

PART 5-1—GENERAL

Subpart 5-1.3—General Provisions

§ 5-1.371 Construction progress payments.

(a) Section 1-7.602-7(c) permits full payment of the current monthly progress payment where progress under a construction contract has been determined by the contracting officer to be satisfactory. It is agency policy that contracting officers will not routinely retain funds throughout the term of a contract, and that decisions to retain will be made on a case-by-case basis.

Retainage may be used: (1) where performance deficiencies have been identified under the contract or past unsatisfactory performance by the contractor has been experienced and (2) as the contact approaches completion, to ensure that deficiencies will be corrected and that completion is timely.

(b) The level of retainage withheld, if any, shall not exceed 10% in the case of unsatisfactory performance, or 5% where the retainage is to ensure satisfactory completion. Upon completion of all contract requirements, retained amounts shall be paid promptly.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c))

Dated: August 11, 1983.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 83-22974 Filed 8-19-83; 8:45 am]

BILLING CODE 6820-61-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[Gen. Docket No. 80-183; RM-2365; RM-2750; RM-3047; RM-3068; FCC 83-146]

Allocation of Spectrum in 928/941 MHz Band and Establishment of Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service.

Correction

In FR Doc. 83-12715 beginning on page 21329 in the issue of Thursday, May 12, 1983, make the following correction:

§ 22.501 [Corrected]

On page 21335, column two, § 22.501(p)(1), column two of the table, second line from the bottom "931.9625", the footnote reference should not appear.

BILLING CODE 1505-01-M

47 CFR Part 22

[Gen. Docket No. 81-768; FCC 83-378]

Public Mobile Radio Services; Amendment of the Commission's Rules To Allow the Use of Random Selection or Lotteries Instead of Comparative Hearings for Certain Applicants; Order Granting Stay

AGENCY: Federal Communications Commission.