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Department of Veterans Affairs

38 CFR Part 21

**Veterans and Dependents Education:
Topping-Up Tuition Assistance; Licensing
and Certification Tests; Duty To Assist
Education Claimants; Final Rule**

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 21

RIN 2900-AK80

**Veterans and Dependents Education:
Topping-Up Tuition Assistance;
Licensing and Certification Tests; Duty
To Assist Education Claimants**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts this final rule to amend the regulations governing various aspects of the education program VA administers. The final rule includes provisions for the payment of educational assistance under Survivors' and Dependents' Educational Assistance, the Post-Vietnam Era Veterans' Educational Assistance Program, and the Montgomery GI Bill—Active Duty (MGIB) for the cost of taking tests for licensure or certification; provisions for the payment of MGIB to individuals on active duty for the difference between the portion of tuition and expenses covered by off-duty military tuition assistance programs and the actual charges made by educational institutions; provisions regarding VA's duty to assist claimants filing claims for educational assistance under the education programs VA administers; and nonsubstantive changes for the purpose of clarity, technical changes, or restatements of statutory provisions.

DATES: *Effective Date:* This final rule is effective May 7, 2007.

Applicability Dates: The provisions that apply to approval of licensing or certification tests or the payment of educational assistance for the cost of taking such tests are applied retroactively to March 1, 2001, as payment for such tests is authorized for tests taken on or after March 1, 2001, in the Veterans Benefits and Health Care Improvement Act of 2000.

The provisions concerning payment under the MGIB for "tuition assistance top-up" are applied retroactively to October 30, 2000, the date of enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.

The provisions concerning VA's duty to assist claimants filing claims for educational assistance apply to claims filed on or after November 9, 2000, the date of enactment of the Veterans Claims Assistance Act of 2000.

FOR FURTHER INFORMATION CONTACT: Lynn M. Nelson, Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans

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SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 22, 2006 (71 FR 9196), VA published a proposed rule proposing to amend subparts B, D, G, and K of 38 CFR part 21, regarding payment of educational assistance for the cost of licensure or certification tests; payment of MGIB educational assistance to pay the difference between the amount of tuition assistance paid by the military and the actual charges made by the educational institution; and the timing and the scope of assistance VA will provide to claimants under the education programs VA administers who file substantially complete applications for benefits, or who attempt to reopen previously denied claims; and various nonsubstantive changes. Some of the provisions in the proposed rule contained proposed collections of information.

Interested persons were given 60 days to submit comments. VA received one comment from a veterans' service organization concerning a provision in proposed 38 CFR 21.1031(b)(3). In 38 CFR 21.1031, "VA responsibilities when a claim is filed," VA proposed to revise § 21.1031(b), with the heading "VA has a duty to notify claimants of necessary information or evidence." Proposed § 21.1031(b)(1) includes provisions concerning the contents of such notice and the circumstances under which VA has the responsibility to provide such notice to a claimant for educational assistance benefits. Proposed § 21.1031(b)(2) includes provisions concerning a one-year time period for providing the information and evidence that the notice informs the claimant that the claimant must provide, and authorizing VA after that period to adjudicate the claim based on the information and evidence in the file.

The organization's comment concerned the proposed provision in § 21.1031(b)(3) that would permit VA, after providing notice to a claimant under proposed § 21.1031(b)(1), to decide a claim for educational assistance 30 days after the request for information or evidence if the claimant has not responded. The comment contended that § 21.1031 "should allow 60 days for response, similar to a compensation or pension claim." The comment stated that "[w]e feel there is no obvious reason to require a veteran or organization to respond so quickly * * *."

As noted in the preamble to the proposed rule, VA issued a final rule in

the **Federal Register** of August 29, 2001 (66 FR 45620) amending 38 CFR part 3 to carry out provisions of the Veterans Claims Assistance Act of 2000 with respect to claims for benefits that are governed by 38 CFR part 3 (including compensation, pension, dependency and indemnity compensation, burial benefits, monetary benefits ancillary to those benefits, and special benefits) (66 FR 45629). Proposed § 21.1031(b)(3) sets out the same 30-day provision as does current 38 CFR 3.159(b)(1), which was adopted in the 2001 final rule for 38 CFR part 3: that if the claimant has not responded to the request within 30 days, VA may decide the claim before the expiration of the one-year period in which the claimant may respond. Under both § 3.159(b)(1) and the proposed § 21.1031(b)(3), if the claimant subsequently submits the specified evidence or information within one year of VA's request, VA must readjudicate the claim.

As noted in the preamble to the final rule that adopted the 30-day period under § 3.159(b)(1), a claimant may delay VA action beyond the 30 days by responding with a request that VA wait beyond the 30-day period while the claimant attempts to gather evidence (66 FR 45623). This would be true under the similar language of proposed § 21.1031(b)(3).

Under § 3.159, it is within VA's discretion to issue a decision after the time period specified in the regulation, or specified in a notice to a claimant, as the time after which VA may decide a claim. As indicated in the comment comparing the 30-day period in proposed § 21.1031(b)(3) to a 60-day period for compensation and pension claims, VA has stated in notices sent under § 3.159 to claimants for compensation or pension benefits that VA may decide the claim if the claimant did not respond within 60 days.

VA has concluded that, under the circumstances concerning the claims for education benefits to which § 21.1031 applies, it is appropriate for this final rule to adopt the 30-day time period that VA proposed for § 21.1031(b)(3), even if, as the comment noted, a different period may be used for certain other benefits administered by VA.

Unlike the various types of information and evidence that are generally needed in substantiating a service-connected disability for compensation purposes or a qualifying disability and financial need for pension, substantiating eligibility under one of the various educational assistance programs VA administers generally requires only proof of military service.

In addition, VA generally has needed more than the 30-day time period in the current § 3.159 before VA would have been able to issue a determination on a compensation and pension claim. In contrast, in most instances, prior to or within a 30-day period from the date that VA provides notice requesting additional information or evidence from a claimant under an educational assistance program, VA has the necessary information available to determine a claimant's eligibility under an educational assistance program. However, VA might not have sufficient information to determine an individual's personal monthly rate of educational assistance (education benefit). For example, under the MGIB program, the October 1, 2005, full-time rate of basic educational assistance for an individual who served three continuous years or more on active duty is \$1,034. Some individuals qualify for a MGIB full-time rate that exceeds \$1,034 due to: voluntary contributions they made while serving on active duty; entitlement to the Army or Navy College Fund; or by serving in the Selected Reserve in a critical military occupation or unit. If VA requested information from a claimant to substantiate his or her entitlement to a rate exceeding \$1,034, and the claimant did not provide that information within 30 days, VA could make a decision based on the evidence of record and award benefits. Thus, VA could award MGIB benefits based on the basic full-time monthly rate of \$1,034 instead of waiting to make a decision until the claimant submitted evidence supporting entitlement to a higher benefit rate. Then, if the claimant subsequently submits evidence to support entitlement to a higher benefit rate (within one year of VA's letter requesting the evidence), VA would, as would be required under § 21.1031, readjudicate the claim, and when appropriate recalculate the rate and award benefits based on the higher monthly rate. VA would pay the claimant any additional monies due him or her based on the recalculation, including any applicable retroactive payment.

In addition to providing claimants with funds sooner (as in the example in the paragraph above), VA chose a 30-day period to encourage the claimant to respond quickly so that the claimant knows as soon as possible whether or not he or she is entitled to benefits. Many of the claimants seeking educational assistance file an application with VA when they enroll with an educational institution. Many educational institutions have a period of

time, referred to as the "drop/add period", during which a student can drop his or her classes without incurring tuition costs. The sooner the claimant receives VA's formal determination regarding his or her eligibility status, the sooner he or she can make a decision regarding his or her continued enrollment.

Considering that claimants generally have incurred education expenses, that education claims do not generally require the types of information and evidence necessary to substantiate compensation or pension claims, that VA can provide a determination and funds sooner with a 30-day response period, that under the provisions of proposed § 21.1031, if the claimant subsequently submits evidence or information to support the claim within one year of VA's letter requesting the evidence, VA would readjudicate the claim, and the other reasons discussed above, VA is making in the final rule no change to the proposed 30-day response period in 38 CFR 21.1031(b)(3).

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that in the proposed parenthetical statements following sections in the proposed rule with information collection provisions we are, where applicable, making changes in the final rule to display the approved information collection control numbers that have been assigned by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In the preamble of the proposed rule, we described the collections in the proposed rule that would need approval by OMB and provided a comment period. We did not receive any comments concerning those collections. OMB has approved those proposed collections, and has assigned control numbers 2900–0051, 2900–0682, 2900–0695, 2900–0696, 2900–0697, and 2900–0698 to them. We display the control numbers under the applicable sections of the regulations in this final rule. OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it raises novel policy issues.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this final rule will affect some small entities that are testing organizations or educational institutions, any economic impact on them would be minor. The portions of this rule that could have an economic impact on these small entities are recordkeeping, reporting, and application for approval requirements, the burdens for which would be the minor ones that were discussed in the preamble of the proposed rule under the heading *Paperwork Reduction Act of 1995*. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule has no such effect on State, local, and tribal governments, or the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for programs that are affected by this rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance. This rule also affects the Montgomery GI Bill—Selected Reserve program, for which there is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 30, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out above, VA amends 38 CFR part 21 (subparts B, D, G, and K) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

■ 1. The authority citation for part 21, subpart B is revised to read as follows:

Authority: 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

■ 2. Section 21.1029 is amended by:

- a. Revising the introductory text.
- b. In paragraph (b)(1), removing “§ 21.1032” and adding, in its place, “§ 21.1033”.
- c. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (i), respectively.
- d. Adding new paragraph (c).

■ e. In newly redesignated paragraph (e)(1)(ii), removing “paragraph (c)(1)(i)” and adding, in its place, “paragraph (d)(1)(i)”.

■ f. In newly redesignated paragraph (e)(4), removing “school” and adding, in its place, “educational institution or training establishment”.

■ g. Adding paragraphs (f), (g), and (h) following the authority citation for paragraph (e).

The revision and additions read as follows:

§ 21.1029 Definitions.

The following definitions of terms apply to this subpart and subparts C, D, F, G, H, K, and L, to the extent that the terms are not otherwise defined in those subparts:

* * * * *

(c) *Educational institution.* The term *educational institution* means:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private elementary school or secondary school;

(4) Any entity, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program;

(5) An organization or entity offering a licensing or certification test; or

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

* * * * *

(f) *Information.* The term *information* means nonevidentiary facts, such as the claimant's Social Security number or address, or the name of the educational institution the claimant is attending.

(Authority: 38 U.S.C. 5101, 5102, 5103)

(g) *Substantially complete application.* (1) The term *substantially complete application* means, for an individual's first application for educational assistance administered by VA, an application containing—

- (i) The claimant's name;
- (ii) His or her relationship to the veteran, if applicable;
- (iii) Sufficient information for VA to verify the claimed service, if applicable;

(iv) The benefit claimed;

(v) The program of education, if applicable; and

(vi) The name of the educational institution or training establishment the claimant intends to attend, if applicable.

(2) For subsequent applications for educational assistance administered by VA, a *substantially complete application* means an application containing the information specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, except that the application may omit any information specified in paragraphs (g)(1)(ii) or (g)(1)(iii) of this section that is already of record with VA.

(Authority: 38 U.S.C. 5102, 5103, 5103A)

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

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

■ 3. Section 21.1030 is revised to read as follows:

§ 21.1030 Claims.

(a) *Claim for educational assistance.*

(1) The first time an individual claims educational assistance administered by VA for pursuit of a program of education, he or she must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If an individual changes his or her program of education or place of training after filing his or her first application for educational assistance, he or she must file an application requesting the change of program or place of training using a form the Secretary prescribes for that purpose.

(3) A servicemember must consult with his or her education service officer before filing an application for educational assistance, whether it is the first application or an application to request a change of program or place of training.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501, 3034(a), 3241(a), 3471, 3513, 5101(a))

(b) *Filing a claim for educational assistance to pay for a licensing or certification test.* To receive educational assistance to pay for a licensing or

certification test, an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose and must include the information described in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(2) If the claim is the second or subsequent claim for educational assistance, the claim must include:

(i) The name of the test;
(ii) The name and address of the organization or entity issuing the license or certificate;
(iii) The date the claimant took the test;

(iv) The cost of the test;

(v) A statement authorizing release of the claimant's test information to VA, such as: "I authorize release of my test information to VA"; and

(vi) Such other information as the Secretary may require.

(Authority: 38 U.S.C. 501, 3034(a), 3241(a), 3471, 3513, 5101(a))

(c) *Filing a claim for educational assistance to supplement tuition assistance provided under a program administered by the Secretary of a military department.* To receive *tuition assistance top-up* as defined in § 21.4200(hh), an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If the claim is the second or subsequent claim for educational assistance, the claimant may submit a statement that he or she wishes to receive tuition assistance top-up.

(3) The claimant must also submit a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance-Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance-Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(4) The claimant must also provide to VA the following information, to the extent it is not contained on any form filed under paragraph (c)(1) or (c)(3) of this section:

(i) His or her name;

(ii) His or her Social Security number;

(iii) The name of the educational institution;

(iv) The name of the course or courses for which the claimant wants educational assistance;

(v) The number of the course or courses;

(vi) The number of credit hours for each course;

(vii) The beginning and ending date of each course;

(viii) The cost of the course or courses; and

(ix) If the claimant doesn't want to receive the full amount of that cost not met by the Secretary of the military department concerned, the portion that the claimant wishes to receive.

(5) If the claimant's military department uses an electronic tuition assistance application process with electronic signatures, VA will accept an electronic transmission of the approved tuition assistance application directly from the military department concerned on behalf of the claimant if—

(i) The electronic tuition assistance application indicates the servicemember's intent to claim tuition-assistance top-up; and

(ii) The information described in paragraph (c)(4) of this section is included in the electronic application.

(Authority: 38 U.S.C. 501, 3034(a), 3241(a), 3471, 3513, 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0074, 2900-0098, 2900-0099, 2900-0154, 2900-0695, and 2900-0698.)

■ 4. Section 21.1031 is amended by:

■ a. In paragraph (a), removing "claim forms," and adding, in its place, "VA claim forms and";

■ b. Revising paragraph (b) to read as follows.

§ 21.1031 VA responsibilities when a claim is filed.

* * * * *

(b) *VA has a duty to notify claimants of necessary information or evidence.*

(1) Except when a claim cannot be substantiated because there is no legal basis for the claim, or undisputed facts render the claimant ineligible for the

claimed benefit, when VA receives a complete or substantially complete application for educational assistance provided under subpart C, D, G, H, K, or L of this part VA will—

(i) Notify the claimant of any information and evidence that is necessary to substantiate the claim; and

(ii) Inform the claimant which information and evidence, if any, the claimant is to provide to VA and which information and evidence, if any, VA will try to obtain for the claimant.

(2) The information and evidence that VA, pursuant to paragraph (b)(1) of this section informs the claimant that the claimant must provide, must be provided within one year from the date of the notice. If VA does not receive such information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(3) If the claimant has not responded to the request within 30 days, VA may decide the claim before the expiration of the one-year period prescribed in paragraph (b)(2) of this section, based on all the information and evidence in the file, including information and evidence it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award shall take effect as if the prior decision by VA on the claim had not been made.

(4) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. If the information necessary to complete the application is not received by VA within one year from the date of such notice, VA cannot pay or provide any benefits based on that application.

(5) For the purpose of this paragraph, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103, 5103A(a)(3))

§ 21.1032 [Redesignated as § 21.1033]

■ 5. Section 21.1032 is redesignated as § 21.1033.

■ 6. New § 21.1032 is added to read as follows:

§ 21.1032 VA has a duty to assist claimants in obtaining evidence.

(a) *VA's duty to assist begins when VA receives a complete or substantially complete application.* (1) Except as provided in paragraph (d) of this section, upon receipt of a complete or substantially complete application for educational assistance under subpart C, D, G, H, K, or L of this part, VA will—

- (i) Make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim; and
- (ii) Give the assistance described in paragraphs (b) and (c) of this section to an individual attempting to reopen a finally decided claim.

(2) VA will not pay any fees a custodian of records may charge to provide the records VA requests.

(Authority: 38 U.S.C. 5103A)

(b) *Obtaining records not in the custody of a Federal department or agency.* (1) VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency. These records include relevant records from:

- (i) State or local governments;
- (ii) Private medical care providers;
- (iii) Current or former employers; and
- (iv) Other non-Federal governmental sources.

(2) The reasonable efforts described in paragraph (b)(1) of this section will generally consist of an initial request for the records and, if VA does not receive the records, at least one follow-up request. The following are exceptions to this provision concerning the number of requests that VA generally will make:

- (i) VA will not make a follow-up request if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile.
- (ii) If VA receives information showing that subsequent requests to the initial or another custodian could result in obtaining the records sought, reasonable efforts will include an initial request and, if VA does not receive the records, at least one follow-up request to the new source or an additional request to the original source.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including—

- (i) The person, company, agency, or other custodian holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A)

(c) *Obtaining records in the custody of a Federal department or agency.* (1) VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to:

- (i) Military records;
- (ii) Medical and other records from VA medical facilities;
- (iii) Records from non-VA facilities providing examination or treatment at VA expense; and
- (iv) Records from other Federal agencies.

(2) VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include cases in which the Federal department or agency advises VA that the requested records do not exist or that the custodian of such records does not have them.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal department or agency custodians. At VA's request, the claimant must provide enough information to identify and locate the existing records, including—

- (i) The custodian or agency holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

(Authority: 38 U.S.C. 5103A)

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete or complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in

which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently not credible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A)

(e) *Duty to notify claimant of inability to obtain records.* (1) VA will notify the claimant either orally or in writing when VA:

(i) Makes reasonable efforts to obtain relevant non-Federal records, but is unable to obtain them; or

(ii) After continued efforts to obtain Federal records, concludes that it is reasonably certain they do not exist or that further efforts to obtain them would be futile.

(2) For non-Federal records requests, VA may provide the notice to the claimant at the same time it makes its final attempt to obtain the relevant records.

(3) VA will make a record of any oral notice conveyed under paragraph (e) of this section to the claimant.

(4) The notice to the claimant must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) The fact described in paragraph (e)(1)(i) or (e)(1)(ii) of this section;

(iv) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102(b), 5103(a), 5103A)

§ 21.1033 [Amended]

■ 6a. Newly redesignated § 21.1033 is amended by removing and reserving paragraph (b).

Subpart D—Administration of Educational Assistance Programs

■ 7. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, and as noted in specific sections.

■ 8. Section 21.4005 is amended by:

- a. Adding introductory text to the section.
- b. Revising the paragraph (a) heading and paragraphs (a)(1) and (a)(2), and the authority citation at the end of paragraph (a).
- c. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(7), respectively.
- d. Adding new paragraphs (a)(3), (a)(4), and (a)(6).
- e. In newly redesignated paragraph (a)(5), removing “a school” and adding, in its place, “an educational institution” and removing “such school.” and adding, in its place, “such educational institution.”
- f. Redesignating paragraphs (b)(1)(ii)(a) through (b)(1)(ii)(f) as paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(F), respectively.
- g. Revising newly redesignated paragraph (b)(1)(ii)(F).
- h. In paragraphs (b)(1)(i) and (b)(2)(i), removing “school” and adding, in its place, “educational institution”.
- i. Redesignating paragraphs (b)(2)(ii)(a) and (b)(2)(ii)(b) as paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B), respectively.
- j. Removing the authority citation following newly redesignated paragraph (b)(2)(ii)(A) and adding an authority citation following newly redesignated paragraph (b)(2)(ii)(B).
- k. In newly redesignated paragraphs (b)(1)(ii)(D), (b)(2)(ii)(A), and (b)(2)(ii)(B), removing “schools” and adding, in its place, “educational institutions”.
- l. In newly redesignated paragraph (b)(2)(ii)(B), removing “persons.” and adding, in its place, “persons, or desiring to offer licensing or certification tests to veterans or eligible persons.”
- m. In paragraph (c)(1), removing “request for” and adding, in its place, “requests for”.
- n. Removing the authority citation following paragraph (c)(2) and adding

an authority citation following paragraph (c)(3).

- o. Revising paragraph (d).
- p. In paragraph (e), redesignating paragraphs (e)(1) through (e)(3) as paragraphs (e)(1)(i) through (e)(1)(iii), respectively; designating the introductory text following the paragraph heading as paragraph (e)(1) introductory text; and designating the undesignated paragraph as paragraph (e)(2).
- q. In newly redesignated paragraph (e)(1) introductory text, removing “when:” and adding, in its place, “when, in circumstances involving a finding of conflicting interests:”.
- r. In newly redesignated paragraph (e)(2), removing “school” and adding, in its place, “educational institution”.
- s. Adding an authority citation for paragraph (e).
- t. Removing paragraph (f).

The revisions and additions read as follows:

§ 21.4005 Conflicting interests.

For the purposes of this section, a person will be considered to be an “officer” of the State approving agency or VA when he or she has authority to exercise supervisory authority, and “educational institution” includes an organization or entity offering licensing or certification tests.

(Authority: 38 U.S.C. 3683, 3689)

(a) *A conflict of interest can cause the dismissal of a VA or State approving agency officer or employee and other adverse consequences.* (1) An officer or employee of VA will be immediately dismissed from his or her office or employment, if while such an officer or employee he or she has owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from any educational institution operated for profit—

- (i) In which a veteran or eligible person was pursuing a course of education under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or
 - (ii) Offering a licensing or certification test that is approved for payment of educational assistance under 38 U.S.C. chapter 30, 32, or 35 to veterans or eligible persons who take that test.
- (2) Except as provided in paragraph (a)(3) or (c) of this section, VA will discontinue payments under § 21.4153 to a State approving agency when the Secretary finds that any individual who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or

services from any educational institution operated for profit—

- (i) In which a veteran or eligible person was pursuing a course of education or training under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or
 - (ii) Offering a licensing or certification test that is approved for payment of educational assistance under 38 U.S.C. chapter 30, 32, or 35 to veterans or eligible persons who take that test.
- (3) VA will not discontinue payments to a State approving agency under paragraph (a)(2) of this section if the State approving agency, after learning that it has any officer or employee described in that paragraph, acts without delay to end the employment of that individual.

(4) If VA discontinues payments to a State approving agency pursuant to paragraph (a)(2) of this section, VA will not resume these payments while such an individual is an officer or employee of the:

- (i) State approving agency;
- (ii) State Department of Veterans Affairs; or
- (iii) State Department of Education.

* * * * *

(6) If a State approving agency finds that any officer or employee of VA or of the State approving agency owns an interest in, or receives wages, salary, dividends, profits, gratuities, or services from an organization or entity, operated for profit, that offers licensing or certification tests, the State approving agency:

- (i) Will not approve any licensing or certification test that organization or entity offers; and
- (ii) Will withdraw approval of any licensing or certification test that organization or entity offers.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3683, 3689)

- (b) * * *
- (1) * * *
- (ii) * * *

(F) His or her position is not connected in any way with the inspection, approval, or supervision of educational institutions desiring to train veterans or eligible persons or to offer a licensing or certification test; or with the processing of claims by or making payments to veterans and eligible persons for taking an approved licensing or certification test.

- (2) * * *
- (ii) * * *
- (B) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3683, 3689)

(c) * * *
(3) * * *

(Authority: 38 U.S.C. 512(a), 3683)

(d) *Notice when VA does not grant a requested waiver.* When VA has denied a request for waiver of application of paragraph (a)(1) or (a)(2) of this section, VA will immediately notify the State approving agency and the educational institution:

(1) That the approval of courses or licensing and certification tests offered by the educational institution must be withdrawn;

(2) The reasons for the withdrawal of approval; and

(3) The conditions that will permit the courses or such tests to be approved again.

(Authority: 38 U.S.C. 3683, 3689(d))

(e) * * *

(Authority: 38 U.S.C. 3683, 3690, 5104)

■ 9. Section 21.4008 is revised to read as follows:

§ 21.4008 Prevention of overpayments.

(a) *Prevention of overpayments to veterans and eligible persons enrolled in educational institutions.* When approval of a course may be withdrawn, and overpayments may exist or may be created, VA may suspend further payments to veterans and eligible persons enrolled in the educational institution offering the course until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3690(b))

(b) *Prevention of overpayments to veterans and eligible persons taking licensing and certification tests.* When approval of a licensing or certification test may be withdrawn, and overpayments may exist or may be created, VA may suspend payments to veterans and eligible persons taking that test until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3689(a), 3690(b))

■ 10. Section 21.4009 is amended by:

■ a. Revising the section heading.

■ b. Adding introductory text.

■ c. Revising paragraphs (c) and (d).

■ d. In paragraph (e), removing “A school” and adding, in its place, “An educational institution”, and removing “the school” and adding, in its place, “the educational institution”.

■ e. Adding authority citations following paragraphs (e) through (j), respectively.

■ f. In paragraph (f), removing “veteran” each place that it appears and adding, in its place, “veteran, reservist,” and removing “school” each place that it

appears and adding, in its place, “educational institution”.

■ g. In paragraphs (g) and (h), removing “the school” each place that it appears and adding, in its place, “the educational institution”.

■ h. In paragraph (g), in its heading, removing “school” and adding, in its place, “educational institution” and, in its text, removing “The school” and adding, in its place, “The educational institution”.

■ i. In paragraph (i), removing “school and” and adding, in its place, “educational institution and”.

■ j. In paragraph (j), removing “a school’s” and adding, in its place, “an educational institution’s”.

The additions and revisions read as follows:

§ 21.4009 Waiver or recovery of overpayments.

For the purposes of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

* * * * *

(c) *Committee on School Liability.* (1) Each VA Regional Processing Office shall have a Committee on School Liability. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines.

(2) The Secretary delegates to each Committee on School Liability, and to any panel that the chairperson of the Committee may designate and draw from the Committee, the authority to find whether an educational institution is liable for an overpayment.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241, 3685, 3689(d))

(d) *Initial decision.* (1) The Education Officer of the VA Regional Processing Office of jurisdiction, or the Service Center Manager when the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction, will decide whether there is evidence that would warrant a finding that an educational institution is potentially liable for an overpayment.

(2) Following each finding of potential liability, the Finance Officer of the VA Regional Processing Office of jurisdiction will notify the educational institution in writing of VA’s intent to apply the liability provisions of paragraph (a) of this section. The notice will—

(i) Identify the students who were overpaid;

(ii) Identify the veterans and eligible persons who took the licensing or certification test and were overpaid;

(iii) Set out in the case of each student, or in the case of each veteran or eligible person who took the test, the educational institution’s actions or omissions which resulted in the finding that the educational institution was potentially liable for the overpayment; and

(iv) State that VA will determine liability on the basis of the evidence of record unless the VA Regional Processing Office of jurisdiction receives additional evidence or a request for a hearing within 30 days of the date the educational institution received the notice.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241, 3685, 3689(d))

(e) * * *

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(f) * * *

(Authority: 38 U.S.C. 3685, 3689)

(g) * * *

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(h) * * *

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(i) * * *

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(j) * * *

(Authority: 38 U.S.C. 512(a), 3685, 3689)

■ 11. Section 21.4131 is amended by:

■ a. Revising the introductory text.

■ b. Redesignating paragraph (a)(1) introductory text and paragraphs (a)(1)(i) through (a)(1)(iii) as paragraph (a)(1)(i) and paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), respectively; redesignating paragraph (a)(2) introductory text and paragraphs (a)(2)(i) and (a)(2)(ii) as paragraph (a)(1)(ii) and paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B), respectively; and adding new paragraph (a)(1) introductory text and new paragraph (a)(2).

■ c. Revising the authority citation following paragraph (a).

■ d. Redesignating paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iv) as paragraph (d)(1)(i) and paragraphs (d)(1)(i)(A) through (d)(1)(i)(D), respectively; redesignating paragraph (d)(2) introductory text and paragraphs (d)(2)(i) and (d)(2)(ii) as paragraph (d)(1)(ii) and paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B), respectively; and adding new paragraph (d)(1) introductory text and new paragraph (d)(2).

■ e. Revising the authority citation following paragraph (d).

The revisions and additions read as follows:

§ 21.4131 Commencing dates.

VA will determine under this section the commencing date of an award or increased award of educational assistance provided pursuant to subpart C or G. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) * * *
(1) *For other than licensing or certification tests.*

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

- (i) While the test is approved under 38 U.S.C. chapter 36;
- (ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and
- (iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3672, 3689, 5110, 5113)

(d) * * *
(1) *For other than licensing or certification tests.*

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

- (i) While the test is approved under 38 U.S.C. chapter 36;
- (ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and
- (iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3512, 3672, 3689, 5110, 5113)

■ 12. In § 21.4146, paragraph (c) is amended by removing “institution” both places it appears, and adding, in its place, “institution (other than an organization or entity offering a licensing or certification test)”.

■ 13. Section 21.4150 is amended by:
■ a. In the introductory text of paragraph (c), removing “will, with respect to a State, be deemed to refer to VA when that State:” and adding, in its place, “will be deemed to refer to VA:”.

■ b. Redesignating paragraphs (c)(1) and (2) as paragraphs (c)(1)(i) and (ii), respectively.
■ c. In newly redesignated paragraph (c)(1)(ii), removing “§ 21.4153 of this part.” and adding, in its place, “§ 21.4153; and”.

■ d. Adding paragraph (c)(1) introductory text, new paragraph (c)(2), and paragraph (g).

■ e. Revising the cross reference at the end of the section.

The additions and revision read as follows:

§ 21.4150 Designation.

(c) * * *
(1) With respect to a State, when that State:

(2) When VA has approval, disapproval, or suspension authority (under paragraphs (d), (e), (f), or (g) of this section, § 21.4152, or as otherwise provided by law).

(g) Approval under 38 U.S.C. 3689 of a licensing or certification test offered by any agency or instrumentality of the Federal government will be under the authority of the Secretary.

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

Cross Reference: *Course and licensing and certification test approval; jurisdiction and notices.* See § 21.4250.

■ 14. Section 21.4151 is amended by:

- a. In paragraph (b)(3), removing the word “and”.
- b. Redesignating paragraph (b)(4) and its authority citation as paragraph (b)(6) and revising the authority citation following newly redesignated paragraph (b)(6).
- c. Adding new paragraph (b)(4) and paragraph (b)(5).

The additions and revision read as follows:

§ 21.4151 Cooperation.

(b) * * *
(4) Determining those licensing and certification tests that may be approved for cost reimbursement to veterans and eligible persons;

(5) Ascertaining whether an organization or entity offering an approved licensing or certification test complies at all times with the provisions of 38 U.S.C. 3689; and

(Authority: 38 U.S.C. 3672, 3673, 3674, 3689)

■ 15. Section 21.4152(b)(5) is amended by removing “schools or courses” both times it appears and adding, in its place, “schools, courses, or licensing or certification tests”.

■ 16. Section 21.4153 is amended by:

- a. Adding introductory text.
- b. Removing the authority citation following paragraph (a)(1)(ii).
- c. Revising the authority citation following paragraph (a)(2)(ii).

The revisions and addition read as follows:

§ 21.4153 Reimbursement of expenses.

For the purposes of this section, other than paragraph (d)(4) of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

- (a) * * *
- (2) * * *
- (ii) * * *

(Authority: 38 U.S.C. 3674, 3689)

■ 17. Section 21.4154 is amended by revising the information collection approval parenthetical at the end of the section to read as follows:

§ 21.4154 Report of activities.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051.)

■ 18. Section 21.4200 is amended by:

- a. In paragraph (a)(5), removing “during the period beginning on November 2, 1994, and ending on September 30, 1996”.
- b. Adding introductory text.
- c. Revising paragraph (c).
- d. Adding paragraphs (ee), (ff), (gg), (hh), and (ii).

The revision and additions read as follows:

§ 21.4200 Definitions.

The definitions in this section apply to this subpart, except as otherwise provided. The definitions of terms defined in this section also apply to subparts C, F, G, H, K, and L if they are not otherwise defined for purposes of those subparts.

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

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

(ee) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation

of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(ff) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(gg) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to the individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test but does not issue the license or certificate; or

(ii) An organization or entity that administers a test but does not issue the license or certificate if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(hh) *Tuition assistance top-up.* The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

(ii) *VA Regional Processing Office.* The term *VA Regional Processing Office* means a VA office where claims for educational assistance under 38 U.S.C.

chapters 30, 32, and 35 and 10 U.S.C. chapter 1606 are allowed or disallowed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3685, 3689)

* * * * *

■ 19. Section 21.4206 is amended by:

■ a. In the introductory text and paragraph (a), removing "Chapter" and "Chapters" each place that they appear, and adding, in their place, "chapter" and removing "on October 31 of that" and adding, in its place, "during that calendar".

■ b. Revising paragraph (b).

The revision reads as follows:

§ 21.4206 Reporting fee.

* * * * *

(b) In computing the reporting fee VA will not count a veteran or servicemember whose only receipt of educational assistance under 38 U.S.C. chapter 30 during a calendar year was tuition assistance top-up.

(Authority: 38 U.S.C. 3014(b), 3684(c))

* * * * *

■ 20. Section 21.4209 is amended by:

■ a. In the introductory text of paragraph (a), removing "educational institutions" and adding, in its place, "an educational institution, including for purposes of this section an organization or entity offering a licensing or certification test,".

■ b. In paragraph (a)(1), removing "Chapter 1606 of Title 10 U.S.C. or Chapters 30, 32, 34, 35, or 36 of Title 38 U.S.C." and adding, in its place, "10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 34, 35, or 36;".

■ c. In paragraph (a)(2), removing the period at the end of the paragraph and adding, in its place, "; and" and removing the authority citation following paragraph (a)(2).

■ d. Adding paragraph (a)(3).

■ e. In paragraph (b) introductory text, paragraph (c), and paragraph (d) introductory text, removing "will" each place that it appears and adding, in its place, "must", and removing "school" and adding, in its place, "educational institution".

■ f. In paragraph (b)(1), removing the period and adding, in its place, a semicolon, and removing "veterans" and adding, in its place, "veterans, reservists,".

■ g. In paragraph (b)(2), removing the period and adding, in its place, a semicolon, and removing "veterans" and adding, in its place, "veterans, reservists," and removing "school" and adding, in its place, "educational institution."

■ h. In paragraph (b)(3), removing "veteran's" and adding, in its place,

"veteran's, reservist's," and removing the period and adding a semicolon in its place.

■ i. In paragraph (b)(4), adding a semicolon at the end of the paragraph.

■ j. In paragraph (b)(5), removing the period and adding "; and" in its place.

■ k. Revising paragraph (b)(7).

■ l. Revising paragraph (f).

■ m. Adding an information collection approval parenthetical at the end of the section.

The additions and revisions read as follows:

§ 21.4209 Examination of records.

(a) * * *

(3) The records of other individuals who took a licensing or certification test that VA believes are necessary to ascertain whether the veterans and eligible persons taking such test were reimbursed the correct amount.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3689, 3690)

(b) * * *

(7) Records necessary to demonstrate compliance with the requirements of § 21.4268.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3689, 3690)

* * * * *

(f) *Retention of records.* (1) Except as provided in paragraph (f)(2) of this section, an educational institution must keep records and accounts, including those pertaining to students not receiving benefits from VA, as described in this section, pertaining to each period of enrollment of a veteran, reservist, or eligible person. If those records are not available electronically, the paper records must be kept intact and in good condition at the educational institution for at least 3 years following the end of each enrollment period. If the records are stored electronically, the paper records may be stored at another site. The electronic records must be easily accessible at the educational institution for at least 3 years following the end of each enrollment period.

(2) An organization or entity offering a licensing or certification test must keep records and accounts intact and in good condition that are needed to show that veterans and eligible persons have been paid correctly for taking licensing or certification tests. The organization or entity must keep those records, at a site mutually agreed on, for at least 3 years following the date of the test.

(3) An educational institution will not be required under this section to retain records for longer than 3 years unless the educational institution receives from the Government Accountability Office or VA not later than 30 days before the

end of the 3-year period a written request for longer retention.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3689, 3690)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0696.)

■ 21. Section 21.4210 is amended by:

■ a. Revising the section heading, the heading of paragraph (a), and paragraphs (a)(1) and (a)(2)(ii).

■ b. In paragraph (b), designating the introductory text following the paragraph heading as paragraph (b)(1) introductory text; redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii), respectively; and adding a new paragraph (b)(2) immediately after the authority citation following paragraph (b)(1)(ii).

■ c. Revising the authority citation following paragraph (c) and revising paragraph (d)(1) introductory text.

■ d. Redesignating paragraphs (d)(1)(i), (d)(1)(ii), (d)(2), and (d)(3) as paragraphs (d)(2)(i), (d)(2)(ii), (d)(3), and (d)(4), respectively.

■ e. Adding new paragraphs (d)(1)(i) and (d)(1)(ii); paragraph (d)(1)(iii); and a new paragraph (d)(2) introductory text.

■ f. In newly redesignated paragraph (d)(2)(i), removing “and 21.4264” and adding, in its place, “21.4264, and 21.4268”.

■ g. Revising the authority citation following paragraph (d).

■ h. In paragraphs (e)(1) and (f), removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”.

■ i. Immediately after the authority citation following paragraph (e)(2), adding paragraph (e)(3).

■ j. Revising paragraph (g).

■ k. In paragraph (h)(1), removing “course or courses” and adding, in its place, “course(s) or test(s)”, and removing “facility” and adding, in its place, “Regional Processing Office”.

■ l. Adding paragraph (i).

The revisions and additions read as follows:

§ 21.4210 Suspension, discontinuance, and denial of educational assistance payments, and disapproval of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview; explanation of terms used in §§ 21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran

or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes. Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

(2) * * *

(ii) The term “educational institution” includes a training establishment, or organization or entity offering a licensing or certification test; and

* * * * *

(b) * * *

(2) VA may deny payment of educational assistance to a specific individual for taking a licensing or certification test if, following an examination of the individual's case, VA has credible evidence affecting that individual that—

(i) The test fails to meet any of the requirements of 38 U.S.C. 3689; or

(ii) The organization or entity offering the individual's test has violated any of the requirements of 38 U.S.C. 3689.

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

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689, 3690)

(d) * * *

(1) The Director of the VA Regional Processing Office of jurisdiction may:

(i) Suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(ii) Disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance); and

(iii) Suspend payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director may determine.

(2) Except as provided in paragraphs (d)(3) and (i) of this section, the decision to act as described in paragraph (d)(1) of this section must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course or taking the test receiving educational assistance to which they are not entitled because:

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) * * *

(3) If VA receives a claim for educational assistance for the taking by an individual of a licensing or certification test, and the individual took the licensing or certification test during a period when payment for taking such test was suspended, the Director will inform the individual in writing of the fact of the suspension and the reasons why payments were suspended.

(Authority: 38 U.S.C. 3689, 3690)

* * * * *

(g) *Referral to the Committee on Educational Allowances.* The Director of the VA Regional Processing Office of jurisdiction will refer the following matters to the Committee on Educational Allowances as provided in § 21.4212:

(1) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(2) A disapproval under paragraph (d) of this section of all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military

department concerned has not covered under tuition assistance); and

(3) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director has determined.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689, 3690)

* * * * *

(i) *This section does not apply to disapproval of courses based on conflicts of interests.* VA will disapprove courses when required by § 21.4005(d) without applying the provisions of paragraphs (a) through (h) of this section.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(a), 3241, 3683(b))

■ 22. Section 21.4211 is amended by:

■ a. Redesignating paragraph (b)(2) and the authority citation following paragraph (b)(2) as paragraph (b)(3).

■ b. Revising the section heading, paragraphs (a) and (b)(1), and the authority citations following paragraphs (b), (c), (d), and (e).

■ c. Adding a new paragraph (b)(2).

■ d. In paragraphs (d), (e)(1), and (e)(2)(iii), removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”.

The revisions and addition read as follows:

§ 21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.

(a) *Authority.* (1) 38 U.S.C. 3690 authorizes VA to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that:

(i) The program of education or course in which such individuals are enrolled fails to meet a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part; or

(ii) An educational institution has violated any such statute or regulation, or fails to meet such a statutory or regulatory requirement.

(2) This authority does not extend to enrollments and reenrollments of individuals seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution’s charges for education or training that the military department concerned has not covered under tuition assistance.

(3) 38 U.S.C. 3689 and 3690 further authorize VA to deny payment to servicemembers or veterans for licensing or certification tests when VA finds that either the test or the

organization or entity offering the test fails to meet a requirement of 38 U.S.C. 3689 or the applicable regulations of this part.

(4) Sections 21.4210 through 21.4216 implement the authority discussed in paragraphs (a)(1) and (a)(3) of this section.

(5) Each VA Regional Processing Office shall have a Committee on Educational Allowances. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines. The Committee’s findings of fact and recommendations will be provided to the Director of the VA Regional Processing Office.

(6) The Secretary of Veterans Affairs delegates to each Director of a VA Regional Processing Office the authority to suspend or discontinue payment of educational benefits, to disapprove enrollments or reenrollments, or to deny payment of benefits for tests.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a); 3034(a), 3241(a), 3689(d), 3690)

(b) * * *

(1) The Committee on Educational Allowances is established to assist the Director of the VA Regional Processing Office of jurisdiction in deciding in a specific case whether—

(i) Educational assistance should be discontinued to all individuals enrolled in any course or courses an educational institution offers; and

(ii) If appropriate, whether approval of all further enrollments or reenrollments in the course or courses an educational institution offers should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs VA administers; or

(iii) Payment should be denied to all servicemembers and veterans for taking a specific licensing or certification test.

(2) A Director’s decision described in paragraph (b)(1) of this section must be based on a finding that the educational institution is not meeting, or has violated, a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 23. Section 21.4212 is amended by:

■ a. In paragraph (a)(5), removing “discontinued and approval of new enrollments or reenrollments denied.” and adding, in its place, “discontinued; approval of new enrollments should be denied; and/or payment to individuals for licensing or certification tests should be denied, as appropriate.”

■ b. Revising the authority citation.

■ c. In paragraphs (a) introductory text and (b)(1)(iii), removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”.

The revision reads as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 24. In § 21.4213, the authority citation is revised to read as follows:

§ 21.4213 Notice of hearing by Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 25. Section 21.4214 is amended in paragraphs (b), (e), (k), (o), and (p) by removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”, and by revising the authority citations for paragraphs (a) through (p) to read as follows:

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(k) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(l) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(m) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(n) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(o) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(p) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 26. Section 21.4215 is amended in paragraphs (b)(1) introductory text, (c), (d), (e)(1), (e)(2) introductory text, and (e)(3) by removing “facility” each place that it appears and adding, in its place, “Regional Processing Office”, and by revising the section heading, paragraph (a), and the authority citations for paragraphs (b), (c), (d), and (e) to read as follows:

§ 21.4215 Decision of Director of VA Regional Processing Office of jurisdiction.

(a) *Decision.* The Director of the VA Regional Processing Office of jurisdiction will render a written decision on the issue or issues of discontinuance or denial that were the subject of the Committee on Educational Allowances proceedings.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 27. Section 21.4216 is amended in paragraph (c) by removing “facility” and adding, in its place, “Regional Processing Office”, and by revising the section heading, paragraph (a), and the authority citation at the end of paragraph (c) to read as follows:

§ 21.4216 Review of decision of Director of VA Regional Processing Office of jurisdiction.

(a) *Decision is subject to review by the Director, Education Service.* At the request of the educational institution the Director, Education Service will review a decision of a Director of a VA Regional Processing Office of jurisdiction to discontinue payments; to disapprove new enrollments or reenrollments; or to deny payment of benefits for licensing or certification tests. This review will be based on the evidence of record when the Director of the VA Regional Processing Office of jurisdiction made that decision. It will not be *de novo* in nature and no hearing on the issue will be held. When reviewing a decision to deny payment for licensing or certification tests, the Director, Education Service may seek the advice of the Professional Certification and Licensure Advisory Committee established under 38 U.S.C. 3689(e).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), (e), 3690)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3689(d), 3690)

■ 28. Section 21.4234 is amended by:

■ a. In paragraph (a)(1), removing “educational professional” and adding, in its place, “educational, professional,”.

■ b. In paragraph (a)(2) introductory text, removing the period and adding a colon in its place.

■ c. In paragraph (a)(2)(i), removing the period and adding a semicolon in its place.

■ d. In paragraph (a)(2)(ii), removing the comma at the end of the paragraph and adding a semicolon in its place.

■ e. In paragraph (a)(2)(iii), removing “program, or” and adding, in its place, “program;”.

■ f. In paragraph (a)(2)(iv), removing the period and adding “; or”.

■ g. Adding paragraph (a)(2)(v), an authority citation following paragraph (e), and an information collection approval parenthetical at the end of the section.

The additions read as follows:

§ 21.4234 Change of program.

(a) * * *

(2) * * *

(v) An enrollment or reenrollment of a servicemember seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution’s charges for education or training that the military department concerned has not covered under tuition assistance.

(Authority: 38 U.S.C. 3691)

* * * * *

(e) * * *

(Authority: 38 U.S.C. 3691)

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900–0074 and 2900–0099.)

■ 29. Section 21.4250 is amended by:

■ a. Revising the section heading and paragraphs (a) and (b)(1).

■ b. In paragraph (b)(2), removing “course” and adding, in its place, “course or licensing or certification test”.

■ c. Removing the authority citation following paragraph (c)(2)(ii).

■ d. In paragraph (c)(2)(iv), removing “36; and” and adding, in its place, “36;”.

■ e. In paragraph (c)(2)(v), removing the period and adding “; and” in its place.

■ f. Removing the authority citation at the end of paragraph (c)(2)(v).

■ g. Immediately after paragraph (c)(2)(v), adding paragraph (c)(2)(vi).

■ h. Revising the cross reference at the end of the section.

■ i. Immediately following the cross reference at the end of the section, adding an information collection approval parenthetical.

The revisions and addition read as follows:

§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) *General.* The statements made in this paragraph are subject to exceptions found in paragraph (c) of this section.

(1) If an educational institution offers a resident course in a State, only the State approving agency for the State where the course is being offered may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(2) If an educational institution with a main campus in a State offers a resident course not located in a State, only the State approving agency for the State where the educational institution’s main campus is located may approve the course for VA training. If the State

approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course by independent study or by correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

(4) If a training establishment offers a program of apprenticeship or other on-job training, only the State approving agency for the State where the training will take place may approve the course for VA training.

(5) Except as provided in paragraph (a)(6)(ii) of this section, if a State or political subdivision of a State offers a licensing test, only the State approving agency for the State where the license will be valid may approve the test for VA payment.

(6)(i) If an organization or entity offers a licensing or certification test and applies for approval of that test, only the State approving agency for the State where the organization or entity has its headquarters may approve the test and the organization or entity offering the test for VA payment. This approval will be valid wherever the test is given.

(ii) If the organization or entity offering a licensing or certification test does not apply for approval, and a State or political subdivision of a State requires that an individual take the test in order to obtain a license, the State approving agency for the State where the license will be valid may approve the test for VA payment. This approval will be valid for the purpose of VA payment only if the veteran takes the test in the State or political subdivision of the State where the license is valid.

(7) A course approved under 38 U.S.C. chapter 36 will be deemed to be approved for purposes of 38 U.S.C. chapter 35.

(8) Any course that was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 before March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters, will be deemed to be approved for purposes of 38 U.S.C. chapter 36.

(9) VA may make tuition assistance top-up payments of educational assistance to an individual to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance, even though a State approving agency has not approved the

course in which the individual was enrolled.

(Authority: 38 U.S.C. 3014(b), 3670, 3672(a))

(b) * * *

(1) *Notice of approval.* (i) Each State approving agency must provide to VA:

(A) A list of schools specifying which courses it has approved;

(B) A list of licensing and certification tests and organizations and entities offering these tests that it has approved; and

(C) Any other information that it and VA may determine to be necessary.

(ii) The lists and information must be provided on paper or electronically as VA may require.

* * * * *

(c) * * *

(2) * * *

(vi) Any licensing or certification test and any organization or entity offering such a test if—

(A) The organization or entity is an agency of the Federal government;

(B) The headquarters of the organization or entity offering the test is not located in a State; or

(C) The State approving agency that would, under paragraph (a)(5) or (a)(6) of this section, have approval jurisdiction for the test has declined to perform the approval function for licensing or certification tests and the organizations or entities offering these tests.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3476, 3523, 3672, 3673, 3689) Cross Reference: *Designation.* See § 21.4150. (The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051.)

■ 30. Section 21.4251 is amended by adding introductory text to read as follows:

§ 21.4251 Minimum period of operation requirement for educational institutions.

The provisions of this section do not apply to licensing or certification tests or to the organizations or entities offering those tests. For information on the minimum period of operation requirement that applies to licensing or certification tests, see § 21.4268.

* * * * *

■ 31. Section 21.4252 is amended by:

- a. Revising the section heading.
- b. Revising the heading of paragraph (h) and adding introductory text.
- c. Revising paragraph (h)(1).
- d. Redesignating paragraph (h)(2) as paragraph (h)(3) and revising the introductory text.
- e. Adding new paragraph (h)(2).
- f. Revising the authority citation following paragraph (h)(3).

■ g. Adding an information collection approval parenthetical at the end of the section.

The revisions and additions read as follows:

§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

* * * * *

(h) *Erroneous, deceptive, or misleading practices.* For the purposes of this paragraph, "educational institution" includes an organization or entity offering licensing or certification tests.

(1) If an educational institution uses advertising, sales, enrollment practices, or candidate handbooks that are erroneous, deceptive, or misleading by actual statement, omission, or intimation, VA will not approve:

- (i) An enrollment in any course such an educational institution offers; and
- (ii) Payment of educational assistance as reimbursement to a veteran or eligible person for taking a licensing or certification test that the educational institution offers.

(2) VA will use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:

- (i) To carry out investigations; and
- (ii) To decide whether an educational institution uses advertising, sales, or enrollment practices, or candidate handbooks, described in paragraph (h)(1) of this section.

(3) Any educational institution offering courses approved for the enrollment of veterans, reservists, and/or eligible persons, or offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who take the tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks (and copies of each) that the educational institution or its agents have used during the preceding 12-month period. The State approving agency and VA may inspect this record. The materials in this record shall include but are not limited to:

* * * * *

(Authority: 38 U.S.C. 3689, 3696)

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0073, 2900-0156, and 2900-0682.)

■ 32. Section 21.4258 is amended by:

- a. Revising paragraphs (a) and (b).
- b. Removing paragraph (c).
- c. Redesignating paragraph (d) as new paragraph (c).

■ d. In newly redesignated paragraph (c)(2)(ii), removing “paragraph (d)(1)” and adding, in its place, “paragraph (c)(1)”

■ e. In newly redesignated paragraph (c)(3), removing “paragraph (d)(2)” and adding, in its place, “paragraph (c)(2)”.

■ f. At the end of the section, revising the authority citation and adding an information collection approval parenthetical.

The revisions and addition read as follows:

§ 21.4258 Notice of approval.

(a) *General; letter of approval and other notice of approval requirements.* The State approving agency, upon determining that an educational institution, training establishment, or organization or entity offering a licensing or certification test has complied with all the requirements for approval will—

(1) Notify by letter, as described in paragraph (b) of this section, each such educational institution, training establishment, or organization or entity offering a licensing or certification test; and

(2) Furnish VA an official copy of the letter, any attachments, and any subsequent amendments. In addition, the State approving agency will furnish VA a copy of each such—

(i) Educational institution’s approved catalog or bulletin;

(ii) Training establishment’s application requesting approval; or

(iii) Organization’s or entity’s candidate handbook.

(b) *Contents of letter of approval.* The letter of approval will include the following:

(1) For an educational institution: (i) Date of the letter and effective date of approval of courses;

(ii) Proper address and name of the educational institution;

(iii) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin;

(iv) Name of each course approved, except that a State approving agency, in lieu of listing the name of each course approved at an institution of higher learning, may identify approved courses by reference to page numbers in the school catalog or bulletin;

(v) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;

(vi) Signature of responsible official of State approving agency; and

(vii) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency.

(2) For a training establishment: (i) Date of the letter and effective date of approval of the apprentice or other on-the-job training;

(ii) Proper address and name of the training establishment;

(iii) Authority for approval and conditions of approval;

(iv) Name of the approved program of apprenticeship or other on-the-job training;

(v) Where applicable, enrollment limitations, such as maximum number of trainees authorized;

(vi) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency; and

(vii) Signature of responsible official of State approving agency.

(3) For an organization or entity offering a licensing or certification test:

(i) Date of the letter and effective date of approval of test(s);

(ii) Proper name of the organization or entity offering the licensing or certification test(s);

(iii) Name of each test approved indicating whether it is a licensing test or certification test;

(iv) Where applicable, enrollment limitations such as maximum numbers authorized and test taker-test proctor ratio; and

(v) Signature of responsible official of State approving agency.

(Authority: 38 U.S.C. 3672, 3678, 3689)

* * * * *

(20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794; 38 U.S.C. 501, 3671; 42 U.S.C. 2000d, 6101 *et seq.*; 38 CFR parts 18, 18a, 18b)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051.)

■ 33. Section 21.4259 is amended by:

■ a. In paragraph (a) introductory text, removing “course” and adding, in its place, “course or licensing or certification test”.

■ b. In paragraph (a)(1), removing “approval of the course for new enrollments” and adding, in its place, “approval of a course for new enrollments, or approval of a licensing or certification test.”; and removing “course fails” and adding, in its place, “course or licensing or certification test fails”.

■ c. In paragraph (a)(2), removing “course” and adding, in its place, “course or licensing or certification test”.

■ d. In paragraph (a)(3), removing “school” and adding, in its place, “educational institution”.

■ e. Revising paragraph (b).

■ f. In paragraph (c), removing “courses” and adding, in its place,

“courses or licensing or certification tests”.

■ g. In paragraph (d), removing “Chapter 31.” and adding, in its place, “38 U.S.C. chapter 31.”.

■ h. At the end of the section, revising the authority citation and adding an information collection approval parenthetical.

The revisions and additions read as follows:

§ 21.4259 Suspension or disapproval.

* * * * *

(b) Each State approving agency will immediately notify VA of each course, or licensing or certification test, that it has suspended or disapproved.

* * * * *

(Authority: 38 U.S.C. 3679, 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051.)

■ 34. Section 21.4266 is amended by revising the cross reference at the end of the section to read as follows:

§ 21.4266 Courses offered at subsidiary branches or extensions.

* * * * *

Cross Reference: *Minimum period of operation requirement for educational institutions.* See § 21.4251.

■ 35. Section 21.4268 is added to read as follows:

§ 21.4268 Approval of licensing and certification tests.

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

(2) The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve the licensing and certification tests and the organizations or entities offering these tests that, as provided in § 21.4250(c)(2)(vi), are VA’s responsibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Have a process to review complaints submitted against the organization or entity with respect to the test or the process for obtaining a license or certificate required for a vocation or profession;

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Has no direct financial interest in—

(A) The outcome of the test; or

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

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

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

(ii) The applicability of the test over such periods of time as the State

approving agency decides is appropriate.

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

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

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

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

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

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

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

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

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

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

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

(5) The decision of the Director, Education Service or the Under

Secretary for Benefits is the final administrative decision. It will not be subject to further administrative review.

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

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

■ 36. In § 21.4272, paragraph (a)(5)(iii) is amended by removing “§ 21.4252(1), (2) or (3).” and adding, in its place, “§ 21.4252(l)(1), (2), or (3).”.

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

■ 37. The authority citation for part 21, subpart G is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 38. Section 21.5021 is amended by:

■ a. Revising the introductory text and paragraphs (k) and (p).

■ b. In paragraph (q)(3), removing “636; or” and adding, in its place, “636;”.

■ c. In paragraph (q)(4), removing “on-job training approved as provided in §§ 21.4261 or 21.4262 of this part as appropriate.” and adding, in its place, “training on-the-job approved as provided in § 21.4261 or § 21.4262 as appropriate; or”.

■ d. Adding paragraph (q)(5) immediately before the authority citation for paragraph (q).

■ e. Revising the authority citation for paragraph (q).

■ f. Adding paragraphs (z), (aa), and (bb).

The revisions and additions read as follows:

§ 21.5021 Definitions.

For the purposes of subpart G and payment of benefits under 38 U.S.C. chapter 32, the following definitions apply (see also §§ 21.1029 and 21.4200):

(k) *Benefit payment.* The term *benefit payment* means any educational assistance allowance paid under 38 U.S.C. chapter 32 to a veteran for pursuit of a program of education during a benefit period.

(Authority: 38 U.S.C. 3231, 3232, 3452(b), 3689)

(p) *Training establishment.* The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship

committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3202, 3452(e))

(q) * * *
(5) A licensing or certification test, the passing of which demonstrates an individual's possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3202(2), 3452(b), 3689)

* * * * *

(z) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3202, 3452(b), 3501(a)(5), 3689)

(aa) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

(bb) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test, but does not issue the license or certificate;

(ii) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3202, 3452(b), 3689)

■ 39. Section 21.5131 is revised to read as follows:

§ 21.5131 Educational assistance allowance.

(a) *General.* Statements in this section concerning payments of educational assistance allowance assume that the veteran or servicemember:

- (1) Is eligible for educational assistance under 38 U.S.C. chapter 32;
- (2) Has remaining entitlement; and
- (3) Has not passed the 10-year delimiting date and any applicable extension to that date.

(Authority: 38 U.S.C. 3241)

(b) *Payment of educational assistance allowance for pursuit of programs of education and other courses.* (1) VA will pay educational assistance allowance at the rate specified in § 21.5136 or § 21.5138 while the veteran or servicemember is pursuing:

- (i) An approved program of education;
- (ii) A refresher or deficiency course;

or
(iii) Special education or training which is necessary to enable the veteran or servicemember to pursue an approved program of education.

(2) Except as provided in paragraph (c) of this section, VA will not pay educational assistance allowance for pursuit of any course unless the course is:

- (i) Part of the veteran's or servicemember's program of education;
- (ii) A refresher or deficiency course;

or
(iii) Special education or training which is necessary to enable the veteran or servicemember to pursue an approved program of education.

(3) VA may withhold a payment until it receives verification or certification of the veteran's or servicemember's continued enrollment and adjusts accordingly the veteran's or servicemember's account.

(Authority: 38 U.S.C. 3241)

(c) *Payment for taking a licensing or certification test.* VA will pay educational assistance allowance to an eligible veteran or servicemember who takes an approved licensing or certification test and applies, in accordance with the provisions of § 21.1030(b), for that assistance. VA will not pay educational assistance for a

licensing or certification test that neither a State approving agency nor VA has approved.

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

■ 40. Section 21.5133 is amended by revising the introductory text, paragraph (a) introductory text, and authority citation to read as follows:

§ 21.5133 Certifications and release of payments.

A veteran or servicemember must be pursuing a program of education in order to receive payment of educational assistance allowance under 38 U.S.C. chapter 32. To ensure that this is the case, the provisions of this section must be met when a veteran or servicemember is seeking such payment.

(a) *General.* VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking reimbursement for taking an approved licensing or certification test; or one who qualifies for an advance payment) only after:

* * * * *

(38 U.S.C. 3680(g), 3689)

* * * * *

■ 41. Section 21.5137 is added to read as follows:

§ 21.5137 Benefit payments and charges against entitlement for taking an approved licensing or certification test.

(a) *Benefit payments.* The amount of educational assistance allowance VA will pay to a veteran or servicemember for taking an approved licensing or certification test, if the veteran or servicemember is entitled to receive such benefit payments, will be the lowest of the following:

- (1) The fee the organization or entity offering the test charges for taking the test;
- (2) \$2,000; or
- (3) The total remaining amount of the veteran's or servicemember's contributions to the fund and the contributions the Secretary of Defense has made to the fund on behalf of the veteran or servicemember.

(Authority: 38 U.S.C. 3222, 3231, 3232(c), 3452(b), 3689)

(b) *Charge against entitlement.* For educational assistance allowance paid for taking an approved licensing or certification test, VA will make a charge against the veteran's or servicemember's entitlement by dividing the amount paid under paragraph (a) of this section by the monthly amount as calculated under § 21.5138(c). The calculation will

assume that the veteran or servicemember is a full-time student.

(Authority: 38 U.S.C. 3232(c), 3452(b), 3689)

■ 42. Section 21.5138 is amended by:

- a. Revising the introductory text.
- b. Revising the introductory text of paragraph (a) and the introductory text of paragraphs (a)(1) through (a)(5).
- c. Revising the introductory text of paragraph (b).
- d. In paragraph (c), removing "The Department of Veterans Affairs" and adding, in its place, "Under this section, VA" and removing "the Department of Veterans Affairs" and adding, in its place, "VA".

The revisions read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

Except as provided in §§ 21.5136(b)(1) and 21.5137(a), for purposes of this subpart VA will compute benefit payments and monthly rates as provided in this section.

(Authority: 38 U.S.C. 3231, 3233, 3241, 3491, 3680, 3689)

(a) *Computation of entitlement factor.*

(1) For residence training, VA will compute an entitlement factor as follows:

* * * * *

(2) For correspondence training, VA will compute an entitlement factor as follows:

* * * * *

(3) For apprenticeship and other on-job training, VA will compute an entitlement factor as follows:

* * * * *

(4) For cooperative training, VA will compute an entitlement factor as follows:

* * * * *

(5) For flight training, VA will compute an entitlement factor as follows:

* * * * *

(b) *Computation of benefit payment.* Under this section, VA will compute benefit payments as follows:

* * * * *

■ 43. Section 21.5200 is amended by:

- a. In paragraph (d), removing "by schools".
- b. In paragraph (j), adding a comma after the word "jurisdiction".
- c. Removing the information collection approval parenthetical at the end of the section.

■ 44. Section 21.5230 is amended by:

- a. In paragraph (a) introductory text, removing "under chapter 32, title 38 U.S.C., only if it—" and adding, in its place, "for a veteran or servicemember under 38 U.S.C. chapter 32, only if—".

■ b. In paragraph (a)(1), removing “Meets” and adding, in its place, “The program meets”, and removing “of this part”.

■ c. Revising paragraphs (a)(2), (a)(3), and (a)(4).

■ d. In paragraph (b), removing “serviceperson” both places that it appears and adding, in its place, “servicemember”.

The revisions read as follows:

§ 21.5230 Programs of education.

(a) * * *

(2) Except for a program consisting of a licensing or certification test, the program has an objective as described in § 21.5021(r) or (s);

(3) Any courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the veteran or servicemember maintain employment in a vocation or profession, the veteran or servicemember is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3202(2), 3689(b))

* * * * *

■ 45. Section 21.5250 is amended by:

■ a. Revising paragraphs (a)(1), (a)(2), (a)(3), (a)(7), and (a)(14).

■ b. Adding paragraph (a)(17) immediately before the authority citation for paragraph (a).

The revisions and addition read as follows:

§ 21.5250 Courses.

(a) * * *

(1) Section 21.4250 (except paragraph (c)(1))—Course and licensing and certification test approval; jurisdiction and notices.

(2) Section 21.4251—Minimum period of operation requirement for educational institutions.

(3) Section 21.4252—Courses precluded; erroneous, deceptive, or misleading practices.

* * * * *

(7) Section 21.4256—Correspondence programs and courses.

* * * * *

(14) Section 21.4265—Practical training approved as institutional training or on-job training.

* * * * *

(17) Section 21.4268—Approval of licensing and certification tests.

* * * * *

■ 46. Section 21.5294 is amended by:

■ a. Revising paragraph (d)(3)(iv) and the authority citation following paragraph (d)(3).

■ b. Removing paragraph (d)(4).

The revisions read as follows:

§ 21.5294 Transfer of entitlement.

* * * * *

(d) * * *

(3) * * *

(iv) Section 21.5131, and

* * * * *

(Authority: Sec. 903, Pub. L. 96–342, 94 Stat. 1115)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 47. The authority citation for part 21, subpart K is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 48. Section 21.7020 is amended by:

■ a. In the introductory text, removing “apply. (See also additional definitions in § 21.1029).” and adding, in its place, “apply.”.

■ b. In paragraph (b)(15), removing “provided” and adding, in its place, “provided in”.

■ c. In paragraph (b)(23)(iii), removing the word “and” at the end of the paragraph.

■ d. In paragraph (b)(23)(iv)(B), removing the period and adding “; and” in its place.

■ e. Adding paragraph (b)(23)(v) immediately before the authority citation for paragraph (b)(23).

■ f. Revising the authority citation for paragraph (b)(23).

■ g. In paragraph (b)(25)(i)(F), removing the word “or”, and in paragraph (b)(25)(i)(G), removing the period and adding “, or” in its place.

■ h. Adding paragraph (b)(25)(i)(H).

■ i. Revising the authority citation for paragraph (b)(25).

■ j. Revising paragraph (b)(37).

■ k. Adding paragraphs (b)(52), (b)(53), (b)(54), and (b)(55).

The revisions and additions read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(23) * * *

(v) Includes a licensing or certification test, the passing of which demonstrates an individual’s possession of the knowledge or skill required to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession, provided that VA or a State approving agency has approved the test and the licensing or credentialing organization or entity that offers the test as provided in 38 U.S.C. 3689.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

* * * * *

(25) * * *

(i) * * *

(H) A licensing or certification test taken on or after March 1, 2001.

(ii) * * *

(Authority: 38 U.S.C. 3002, 3034, 3452, 3680(g), 3689; Pub. L. 98–525)

* * * * *

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

(Authority: 38 U.S.C. 3002, 3452)

* * * * *

(52) *Certification test.* The term *certification test* means a test that an individual must pass in order to receive a certificate that provides an affirmation of an individual’s qualifications in a specified occupation.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(53) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(54) *Organization or entity offering a licensing or certification test.* (i) The term *organization or entity offering a licensing or certification test* means:

(A) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(B) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(C) An organization or entity that administers a certification test for the organization or entity that will issue a certificate to an individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(ii) This term does not include:

(A) An organization or entity that develops and/or proctors a licensing or

certification test, but does not issue the license or certificate; or

(B) An organization or entity that administers a test but does not issue the license or certificate, if that administering organization or entity cannot provide all required information and certifications under § 21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3002(3), 3452(b), 3689)

(55) *Tuition assistance top-up.* The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

* * * * *

§ 21.7032 [Amended]

■ 49. Section 21.7032 is amended by:

■ a. In paragraph (a), removing “§ 21.1032.” and adding, in its place, “§ 21.1033.”.

■ b. In paragraph (b)(2), removing “§ 21.7131(k).” and adding, in its place, “§ 21.7131(l).”.

§ 21.7051 [Amended]

■ 50. In § 21.7051, paragraph (a)(1) is amended by removing “§ 21.1032(c) of this part.” and adding, in its place, “§ 21.1033(c).”.

■ 51. Section 21.7075 is added to read as follows:

§ 21.7075 Entitlement to tuition assistance top-up.

An individual who is entitled to educational assistance under 38 U.S.C. chapter 30 is also entitled to 36 months of tuition assistance top-up. This entitlement is parallel to, and does not replace, the entitlement to educational assistance available under § 21.7072. If the individual receives tuition assistance top-up, VA will make a charge against both the entitlement under § 21.7072 and the entitlement under this section. The charge will be as described in § 21.7076(b)(11).

(Authority: 38 U.S.C. 3013, 3014(b), 3032)

■ 52. Section 21.7076 is amended by:

■ a. In paragraph (a)(2) and the introductory text of paragraph (a)(3), removing “service member” and adding, in its place, “servicemember”.

■ b. In paragraph (a)(3)(iii), removing the word “or” at the end of the paragraph.

■ c. In paragraph (a)(3)(iv), removing the period and adding a semicolon in its place.

■ d. Adding paragraphs (a)(3)(v) and (a)(3)(vi).

■ e. In paragraph (a)(4)(i), removing “service members” and adding, in its place, “servicemembers”.

■ f. Revising the authority citation following paragraph (a).

■ g. Revising paragraph (b)(1) introductory text and the authority citation following paragraphs (b)(2)(ii) and (b)(6)(ii).

■ h. Adding authority citations following paragraphs (b)(3)(iii), (b)(4), and (b)(5)(ii).

■ i. Adding paragraphs (b)(10) and (b)(11).

The revisions and additions read as follows:

§ 21.7076 Entitlement charges.

(a) * * *

(3) * * *

(v) Is receiving educational assistance for taking an approved licensing or certification test; or

(vi) Is receiving tuition assistance top-up.

* * * * *

(Authority: 38 U.S.C. 3013, 3014(b), 3014A, 3689)

(b) * * *

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-job training; those receiving tuition assistance top-up; those receiving educational assistance for taking an approved licensing or certification test; those receiving tutorial assistance; and those receiving an accelerated payment, VA will make a charge against entitlement:

* * * * *

(2) * * *

(ii) * * *

(Authority: 38 U.S.C. 3013)

(3) * * *

(iii) * * *

(Authority: 38 U.S.C. 3032(c))

(4) * * *

(Authority: 38 U.S.C. 3015(e), 3032(c))

(5) * * *

(ii) * * *

(Authority: 38 U.S.C. 3032(d))

(6) * * *

(ii) * * *

(Authority: 38 U.S.C. 3032(c), 3032(d))

* * * * *

(10) When a servicemember receives tuition assistance top-up, VA will make a charge against his or her entitlement as established under § 21.7072 equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember’s monthly rate of basic educational assistance as calculated under § 21.7136. VA will make a charge

against his or her tuition assistance top-up entitlement as established under § 21.7075 by subtracting from that entitlement the total number of months and days in the term, quarter, or semester for which the servicemember received tuition assistance.

(Authority: 38 U.S.C. 3014(b))

(11) When a veteran or servicemember receives educational assistance for taking an approved licensing or certification test, VA will make a charge against his or her entitlement equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember’s monthly rate of basic educational assistance as calculated under § 21.7136, excluding any additional “kicker” that may be paid under § 21.7136(g).

(Authority: 38 U.S.C. 3032(f)(2))

* * * * *

■ 53. Section 21.7110 is revised to read as follows:

§ 21.7110 Selection of a program of education.

(a) *Payments of educational assistance are usually based on pursuit of a program of education.* In order to receive educational assistance under 38 U.S.C. chapter 30, a veteran or servicemember must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher or deficiency courses;

(3) Be pursuing other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting tuition assistance top-up.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3689)

(b) *Approval of a program of education.* VA will approve a program of education under 38 U.S.C. chapter 30 that a veteran or servicemember selects if:

(1) It meets the definition of a program of education found in § 21.7020(b)(23);

(2) Except for a program consisting of a licensing or certification test, has an objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the veteran or servicemember maintain employment in a vocation or profession, the veteran or servicemember is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3002(3), 3034, 3471, 3689)

■ 54. Section 21.7122 is amended by:

■ a. Revising paragraphs (a), (b), and (c), and the authority citation for paragraph (e).

■ b. In paragraph (e)(7), removing the word “or”.

■ c. In paragraph (e)(8), removing the period and adding “; or” in its place.

■ d. Adding paragraph (e)(9).

The revisions and addition read as follows:

§ 21.7122 Courses precluded.

(a) *Unapproved courses.* The provisions of this section which refer to a State approving agency will be deemed to refer to VA with respect to a State when that State does not have and fails or declines to create or designate a State approving agency; or fails to enter into an agreement as provided in § 21.4153 (see § 21.4150(c)). Except for payment of tuition assistance top-up, VA will not pay educational assistance for:

(1) An enrollment in any course that a State approving agency has not approved;

(2) A new enrollment in a course while a State approving agency has suspended the course for new enrollments;

(3) Any period within an enrollment in a course if the period occurs after the date a State approving agency disapproves the course; or

(4) Taking a licensing or certification test after the date a State approving agency disapproves the test. See § 21.7220.

(Authority: 38 U.S.C. 3014(b), 3034, 3672)

(b) *Courses outside a program of education.* VA will not pay educational assistance for an enrollment in any course that is not part of a program of education unless the veteran or servicemember is enrolled in:

(1) A refresher course (including a course which will permit the veteran or servicemember to update knowledge and skills or be instructed in the technological advances which have occurred in the veteran's or servicemember's field of employment);

(2) A deficiency course;

(3) A preparatory, special education, or training course necessary to enable the veteran or servicemember to pursue an approved program of education; or

(4) A course for which the veteran or servicemember is seeking tuition assistance top-up.

(Authority: 38 U.S.C. 3002(3), 3014(b), 3034, 3452(b))

(c) *Erroneous, deceptive, misleading practices.* (1) VA will not pay educational assistance for:

(i) An enrollment in any course offered by an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimidation.

(ii) Taking a licensing or certification test if the organization or entity offering the test uses advertising or sales practices, or candidate handbooks, that are erroneous, deceptive, or misleading by actual statement, omission, or intimidation.

(2) VA will apply the provisions of § 21.4252(h) in making these payment decisions.

(Authority: 3034, 3689(d), 3696)

* * * * *

(e) * * *

(9) Taking a licensing or certification test after the date the State approving agency suspends approval of the test.

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680(g), 3689(d))

■ 55. Section 21.7124 is revised to read as follows:

§ 21.7124 Overcharges.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an educational institution for further enrollments when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges that the educational institution requires from similarly circumstanced nonveterans enrolled in the same course.

(Authority: 38 U.S.C. 3034, 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.* VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges or receives from a veteran or servicemember fees that exceed the established fees that the organization or entity requires from similarly circumstanced nonveterans taking the same test.

(Authority: 38 U.S.C. 3689(d), 3690(a))

■ 56. Section 21.7131 is amended by:

■ a. Revising the introductory text.

■ b. Redesignating paragraph (a)(1) introductory text and paragraphs (a)(1)(i) through (a)(1)(v) as paragraphs (a)(1)(i) and paragraphs (a)(1)(i)(A) through (a)(1)(i)(E), respectively; redesignating paragraph (a)(2) introductory text and paragraphs (a)(2)(i) and (a)(2)(ii) as paragraph (a)(1)(ii) and paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B), respectively; and adding a paragraph (a)(1) heading and new paragraph (a)(2).

■ c. Revising the authority citation following paragraph (a).

■ d. Removing the information collection approval parenthetical following paragraph (p).

The revisions and additions read as follows:

§ 21.7131 Commencing dates.

VA will determine under this section the commencing date of an award or increased award of educational assistance. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) * * *

(1) For other than licensing or certification tests.

* * * * *

(2) *For licensing or certification tests.* VA will award educational assistance for the cost of a licensing or certification test only when the veteran or servicemember takes such test—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the veteran or servicemember is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 3689, 5110, 5113)

* * * * *

■ 57. Section 21.7135 is amended by:

■ a. In the introductory text of paragraph (i), removing “§ 21.4211(d) and (g)” and adding, in its place, “§§ 21.4215(d) and 21.4216”.

■ b. In paragraph (i)(2), removing “§ 21.4211(d) and (g)” and adding, in its place, “§ 21.4215(d)”.

■ c. In paragraph (j)(1), removing “director” and adding, in its place, “Director”.

■ d. In paragraphs (j) and (k), removing “facility” each place that it appears, and adding, in its place, “Regional Processing Office”.

- 58. Section 21.7140 is amended by:
 - a. Adding an authority citation for paragraph (b).
 - b. Revising paragraph (c) introductory text, paragraph (c)(1) introductory text, and the authority citation following paragraph (c)(1)(ii).
 - c. Adding paragraphs (c)(4) and (c)(5), and, at the end of the section, an information collection approval parenthetical.

The revisions and additions read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3014A)

(c) *Other payments.* Except for an individual who is seeking tuition assistance top-up, an individual must be pursuing a program of education in order to receive payments of educational assistance under 38 U.S.C. chapter 30. To ensure that this is the case, the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking tuition assistance top-up; one seeking reimbursement for taking an approved licensing or certification test; one who qualifies for an advance payment; one who qualifies for an accelerated payment; or one who qualifies for a lump sum payment) only after:

- (i) * * *
- (ii) * * *

(Authority: 38 U.S.C. 3680(g), 3689)

* * * * *

(4) VA will pay educational assistance to a veteran or servicemember as reimbursement for taking an approved licensing or certification test only after the veteran or servicemember has submitted to VA a copy of the veteran's or servicemember's official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

- (i) The name of the test;
- (ii) The name and address of the organization or entity issuing the license or certificate;
- (iii) The date the veteran or servicemember took the test; and
- (iv) The cost of the test.

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

(5) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military

service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. If the form(s) submitted did not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

- (i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;
- (ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;
- (iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;
- (iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and
- (v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0695 and 2900-0698.)

- 59. Section 21.7142 is revised to read as follows:

§ 21.7142 Accelerated payments, payment of tuition assistance top-up, and licensing or certification test reimbursement.

(a) *Amount of accelerated payment.* An accelerated payment will be the lesser of—

(1) The amount equal to 60 percent of the charged tuition and fees for the term, quarter, or semester (or the entire program of education for those programs not offered on a term, quarter, or semester basis), or

(2) The aggregate amount of basic educational assistance to which the individual remains entitled under 38 U.S.C. chapter 30 at the time of the payment.

(Authority: 38 U.S.C. 3014A)

(b) *Amount of tuition assistance top-up.* The amount of tuition assistance top-up VA will pay to an individual for a course is the lowest of the following:

- (1) All of the charges of the educational institution for the individual's education or training that the Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c);
- (2) That portion of the charges of the educational institution for the individual's education that the

Secretary of the military department concerned has not paid under 10 U.S.C. 2007(a) or 2007(c) and for which the individual has stated to VA that he or she wishes to receive payment;

(3) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to educational assistance as provided under § 21.7072 or § 21.7073 by the individual's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate;

(4) An amount VA will determine by multiplying the individual's remaining months and days of entitlement to tuition assistance top-up as provided under § 21.7075 by the individual's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate; or

(5) An amount VA will determine by—

(i) Dividing the total number of days from the date on which the individual became eligible for educational assistance under the Montgomery GI Bill—Active Duty by the number of days in the term during which the individual took the course or course for which he or she wants tuition assistance top-up; and

(ii) Multiplying the result by the amount stated in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 3014(b))

(c) *Amount of reimbursement for taking a licensing or certification test.* The amount of educational assistance VA will pay as reimbursement for taking an approved licensing or certification test is the lowest of the following:

(1) The fee that the licensing or certification organization offering the test charges for taking the test;

(2) \$2,000; or

(3) An amount VA will determine by multiplying the veteran's or servicemember's remaining months and days of entitlement to educational assistance as provided under § 21.7072 or § 21.7073 by the veteran's or servicemember's monthly rate of basic educational assistance as provided under § 21.7136 or § 21.7137, as appropriate.

(Authority: 38 U.S.C. 3032(f))

- 60. Section 21.7150 is amended by:
 - a. Removing "The" and adding, in its place, "Except for a veteran or servicemember seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, the".

- b. Revising the authority citation.

The revision reads as follows:

§ 21.7150 Pursuit.

* * * * *

(Authority: 38 U.S.C. 3034(b))

■ 61. Section 21.7152 is amended by:

■ a. In the introductory text, removing “As stated in § 21.7140 of this part” and adding, in its place, “Except as stated in § 21.7140”.

■ b. Revising paragraph (a).

The revision reads as follows:

§ 21.7152 Certification of enrollment.

* * * * *

(a) *Educational institutions must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require educational institutions to certify the enrollments of veterans or servicemembers who either are seeking tuition assistance top-up or, in the cases described in § 21.7151, are seeking an advance payment. VA does not require organizations or entities offering a

licensing or certification test to certify the fact that the veteran or servicemember took the test. In all other cases the educational institution must certify the veteran’s or servicemember’s enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as the Secretary may specify.

(Authority: 38 U.S.C. 3014(b), 3031, 3034, 3482(g), 3680, 3687, 3689, 5101(a))

* * * * *

■ 62. Section 21.7220 is amended by:

■ a. Revising paragraphs (b)(1) and

(b)(2).

■ b. In paragraphs (b)(3) through (b)(10), removing the commas at the end of the paragraphs and adding semicolons in their places.

■ c. In paragraph (b)(11), removing the period and adding “; and” in its place.

■ d. Adding paragraph (b)(12) immediately before the authority citation for paragraph (b).

The revisions and addition read as follows:

§ 21.7220 Course approval.

* * * * *

(b) * * *

(1) Section 21.4250 (except paragraph (c)(1))—Jurisdiction for course and licensing and certification test approval and approval notices;

(2) Section 21.4251—Minimum period of operation requirement for educational institutions;

* * * * *

(12) Section 21.4268—Approval of licensing and certification tests.

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