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benefits under chapter 81, title 5 U.S.C.; but

(i) Shall not be deemed an employee of the United States for the purpose of laws administered by the Office of Personnel Management.

(2) While pursuing on-job training or work experience in a State or local government agency the veteran shall have the employment status and rights comparable to those provided in paragraph (b)(1) of this section for a veteran pursuing on-job training or work experience at a Federal agency.

(Authority: 38 U.S.C. 3115, Pub. L. 100-689)

(c) *Terms applicable to training in State and local government.* (1) The term *State* means each of the several States Territories, any possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

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

(2) The term *local government agency* means an administrative subdivision of a government including a county, municipality, city, town, township, public authority, district, school district, or other such agency or instrumentality of a local government.

(3) The term *Federal financial assistance* means the direct or indirect provision of funds by grant, loan, contract, or any other arrangement by the Federal government to a State or local government agency.

(d) *Additional considerations in providing on-job training and work experience in State and local government agencies.* (1) The veteran's progress and adjustment in a rehabilitation program conducted wholly or in part at a State or local government agency shall be closely monitored by VR&C staff members to assure that:

(i) Training and rehabilitation services are provided in accordance with the veteran's rehabilitation plan. The plan shall provide for:

(A) Close supervision of the veteran's progress and adjustment by the case manager during the period he or she is at the State or local government agency; and

(B) The employer's periodic certification (not less than once every three months) that the veteran's progress and adjustment are in accordance with

the program which has been jointly developed by VA, the veteran and the employer; and

(ii) The veteran achieves his or her employment goal.

(2) Training may not be provided for a position which involves religious or political activities;

(3) The veteran's training:

(i) Will not result in the displacement of currently employed workers; and

(ii) Will not be in a job while another person is laid off from a substantially equivalent job, or will not be in a job the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its workforce with the intention of using the opening for a Chapter 31 trainee.

(Authority: Pub. L. 100-689)

[55 FR 3739, Feb. 5, 1990]

RATE OF PURSUIT

§21.310 Rate of pursuit of a rehabilitation program.

(a) *Programs offered at educational institutions.* This section provides policy for determining the full-time and part-time rate of pursuit of a rehabilitation program by a veteran whose ability to pursue a program has not been reduced by the effects of disability.

(1) *Measuring full and part-time training.* VA will measure the full-time and part-time rate of pursuit of training offered at educational institutions according to the criteria found in §§21.4270 through 21.4275, except as provided in paragraphs (a) (2) and (3) of this section.

(2) *Independent study course.* (i) For certain seriously disabled veterans described in subdivision (i)(A) of this subparagraph VA may measure the veteran's enrollment:

(A) In an independent study course as half-time or greater training, or

(B) Both in independent study subjects and subjects requiring class attendance on the basis of the combined training load when the number of credit hours of independent study equals or exceeds the number of other credit hours.

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(ii) To qualify for measurement described in paragraph (a)(2)(i) of this section:

(A) The seriously disabled veteran must have a disability or circumstances which preclude regular attendance at an institution of higher learning, and

(B) Independent study must be a sound method for providing the training necessary for restoring the veteran's employability.

(iii) In all other cases VA will measure independent study according to the provisions of §21.4280.

(3) *Special school.* If training is pursued in a special school, such as those for persons with visual or hearing disabilities, the rate of pursuit will be measured under §§21.2470 through 21.4275 unless it is the established policy of the school to measure the rate of pursuit for full-time or particular level or part-time training based upon fewer semester, credit, or clock hours of attendance than prescribed in these regulations.

(4) *Farm cooperative.* If training in a farm cooperative program is provided by an educational institution, the rate of pursuit shall be determined the same as under §21.4270 for that type of training.

(5) *Course offered under contract.* When a school or other entity furnishes all or part of a vocational rehabilitation program under contract with another school, VA will measure the course or courses as appropriate for the school or other entity actually providing the training.

(b) *Education or training not furnished by an educational institution.* The following types of training which are not furnished by an educational institution (§21.35(k)(3)) may only be pursued full-time:

(1) *On-job training.* Full-time training in an on-job program is the lesser of the number of hours in the prevailing workweek for:

(i) Journeyman employees in the same job categories at the establishment where training is being provided;

(ii) Other persons in on-job training for the same or similar occupations at the facility where the veteran is training or at other facilities in the locality.

(2) *Farm cooperative training.* If training in a farm cooperative program is provided by an individual instructor, the full-time rate of pursuit must meet the requirements of §21.126.

(3) *Independent instructor.* The full-time rate of pursuit for a veteran in an independent instructor program must meet the requirements of §21.146.

(4) *Training in the home.* The full-time rate for a training program provided in the veteran's home must meet the requirements of §21.146.

(5) *Vocational course in a rehabilitation facility or sheltered workshop.* A vocational course of training offered by a rehabilitation facility or sheltered workshop (§21.35(k)(5) and (6)), will be measured under provisions of §21.4270(b) for trade or technical non-accredited courses, unless it is the established policy of the facility to measure the rate of pursuit for full-time or a particular level of part-time training based upon fewer clock hours of attendance than provided in that regulation.

(c) *Combination and cooperative programs.* The rate of pursuit of a program which combines institutional training and on job training will be measured as follows:

(1) The institutional part will be assessed under §§21.4270 through 21.4275, and

(2) The on-the-job part will be assessed under paragraph (b)(1) of this section.

(d) *Rehabilitative services.* Measurement of the rate of pursuit for veterans in programs consisting primarily of services designed to evaluate and improve physical and psychological functioning will be assessed under this paragraph.

(1) The services assessed under this paragraph include:

(i) Evaluation and improvement of the rehabilitation potential of a veteran for whom attainment of a vocational goal is reasonably feasible;

(ii) Extended evaluation to determine whether attainment of a vocational goal is reasonably feasible; or

(iii) A program of independent living services to enable a veteran to function more independently in his or her family and community when attainment of a vocational goal is not reasonably feasible.

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(2) Measurement of the rate of pursuit for services and programs named in paragraph (d)(1) of this section will be:

(i) As provided in paragraph (a) of this section for services furnished by educational institutions; or

(ii) According to the noneducational facility's customary criteria for full-time and part-time pursuit. If the facility does not have established criteria for full-time and part-time pursuit, or services are being provided by more than one facility, the rate of pursuit will be assessed in the following manner:

Rate of pursuit	Clock hours per month
Full-time	120 or more.
Three-quarter time ¹	90–119.
Half-time ¹	60–89.
Quarter-time ¹	30–59.

¹ Extended evaluation and independent living.

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

§ 21.312 Reduced work tolerance.

(a) *General.* VA will consider that a veteran with reduced work tolerance is pursuing a rehabilitation program full-time when the amount of time the veteran is devoting to his or her program is as great as the effects of his or her disability (service and nonservice-connected) will permit.

(b) *Pursuit of a program.* A veteran with reduced work tolerance may pursue a rehabilitation program when the following conditions are met:

(1) Reduced work tolerance has been determined.

(2) Achievement of the goals of the program are reasonably feasible;

(3) The IWRP (Individualized Written Rehabilitation Plan) or other plan provides for completion of the program under Chapter 31.

(c) *Redetermination of work tolerance.* As necessary, but not less than once yearly, the veteran's work tolerance will be reevaluated. The rate of pursuit required to meet the standard of full-time pursuit will be modified if there is either an increase or decrease in the work tolerance of the veteran.

(d) *Payment of allowance.* A veteran with a reduced work tolerance will be paid a subsistence allowance, at the full-time rate for the type of program

being pursued, when the veteran meets the standard for full-time pursuit established for him or her in the Plan. A veteran with reduced work tolerance, who elects benefits at the Chapter 34 rate, will have to meet normal attendance requirements for that chapter, however.

(e) *Determining work tolerance.* A VA physician will make all determinations and redeterminations of work tolerance.

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

§ 21.314 Pursuit of training under special conditions.

A veteran is required to pursue a rehabilitation program at a rate which meets the requirement for full- or part-time participation described in §§ 21.310 and 21.312. However, a veteran may pursue a rehabilitation program at a lesser rate, if such pursuit is a part of the veteran's plan. Subsistence allowance is not payable during such periods.

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

AUTHORIZATION OF SUBSISTENCE ALLOWANCE AND TRAINING AND REHABILITATION SERVICES

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

Awards providing for payment of a subsistence allowance and authorization of services necessary for rehabilitation may be prepared when an IWRP (Individualized Written Rehabilitation Plan) or other plan has been completed and other requirements for entrance or reentrance into a rehabilitation program have been met.

(a) *Commencing date of subsistence allowance.* The commencing date of an award of subsistence allowance will be determined under the provisions of § 21.322.

(b) *Commencing date of authorization of training and rehabilitation services.* The commencing date for authorization of training and rehabilitation services is the same as the effective date for awards for subsistence allowance under provisions of § 21.322, except when:

(1) The commencing date for authorization of a program of employment