

§ 21.4002

38 CFR Ch. I (7-1-03 Edition)

jurisdiction of the Education Service, designated by him or her to make findings and decisions under 38 U.S.C. Chapters 34 and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.

(b) Authority is delegated to the Under Secretary for Benefits and the Director, Education Service, to enter into agreements for the reimbursement of State approving agencies under § 21.4153.

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

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

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

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

(3) Approval of courses under § 21.4250(c)(2).

(Authority: 38 U.S.C. 512(c))

(d) The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education and special restorative training to implement Title VI, Civil Rights Act of 1964. Authority is delegated to him or her and his or her designee to take any necessary action as to programs of vocational rehabilitation, education or special restorative training under 38 U.S.C. Chapters 31, 34, 35 and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Secretary has delegated responsibility for various schools or training establishments to implement §§ 18.1 through 18.13 of this chapter.

(e) The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in facilities under his or her jurisdiction.

(f) The Under Secretary for Benefits is delegated responsibility to enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, con-

sistent with its available resources, to carry out investigations and make determinations as to enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.

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

(g) Authority is delegated to the Director, Vocational Rehabilitation and Employment Service to exercise the functions required of the Secretary for approval of courses under § 21.4250(c)(1).

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

[31 FR 6774, May 6, 1966, as amended at 40 FR 31759, July 29, 1975; 48 FR 37975, Aug. 22, 1983; 50 FR 46764, Nov. 13, 1985; 61 FR 26112, May 24, 1996]

§ 21.4002 Finality of decisions.

(a) The decision of a duly constituted agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Department of Veterans Affairs as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 21.4003. (See §§ 19.192 and 19.183 of this chapter.)

(b) Current determinations of line of duty, character of discharge, relationship, and other pertinent elements of eligibility for a program of education or special restorative training, made by either an adjudicative activity or an insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

[31 FR 6774, May 6, 1966, as amended at 48 FR 37976, Aug. 22, 1983]

§ 21.4003 Revision of decisions.

The revision of a decision on which an action was predicated will be subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter;

Department of Veterans Affairs

§ 21.4005

(b) Difference of opinion, § 3.105(b) of this chapter;

(c) Character of discharge, § 3.105(c) of this chapter;

(d) Severance of service connection, § 3.105(d) of this chapter;

(e) Veteran no longer totally and permanently disabled, § 21.4135(o).

§ 21.4005 Conflicting interests.

(a) *General.* (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 school operated for profit 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. chapters 30, 32, 34, 35 or 36.

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

(2) VA will discontinue payments under § 21.4153 to a State approving agency when the Secretary finds that any person 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 a school operated for profit 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. chapters 30, 32, 34, 35 or 36 unless that agency takes, without delay such steps as may be necessary to terminate the employment of such a person. VA will not resume payments while such a person is an officer or employee of

(i) The State approving agency, or

(ii) State Department of Veterans' Affairs, or

(iii) State Department of Education.

(3) A State approving agency will not approve any course offered by a school operated for profit and, if any such course has been approved, will disapprove each such course, if it finds that any officer or employee of the Department of Veterans Affairs, or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or service from, such school.

(4) The Secretary may, after reasonable notice, and public hearings if requested, waive in writing the application of this paragraph in the case of any officer or employee of the Department of Veterans Affairs or of a State approving agency, if it is found that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee.

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

(b) *Waiver.* (1) Where a request is made for waiver of application of paragraph (a)(1) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of the Department of Veterans Affairs, if the officer or employee:

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

(ii) Meets all of the following conditions:

(a) His or her position involves no policy determinations, at any administrative level, having to do with matters pertaining to payment of educational assistance allowance, or special training allowance.

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

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

(d) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 34, 35 or 36.

(e) His or her position is not connected with the processing of claims by, or payments to, schools, or their students enrolled under the provisions of 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 34, 35 or 36.