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sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(iii) Any other type of course which VA determines to be avocational or recreational.

(3) To overcome the presumption that a course is avocational or recreational in character, the veteran or servicemember must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(Authority: 38 U.S.C. 3034, 3473; Pub. L. 98-525)

(c) *Flight training.* (1) VA may pay educational assistance for an enrollment in a flight training course—

(i) When an institution of higher learning offers the course for credit toward the standard college degree the veteran or servicemember is pursuing; or

(ii) When—

(A) A flight school is offering the course,

(B) The State approving agency and the Federal Aviation Administration have approved the course.

(C) The course of flight training is generally accepted as necessary to attain a recognized vocational objective in the field of aviation which the veteran or servicemember is pursuing, and

(D) The training for which payment is made occurred after September 29, 1990.

(2) VA will not pay educational assistance for an enrollment in a flight training course which the veteran or servicemember is pursuing as ancillary training for a vocation other than aviation.

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

(d) *Independent study.* (1) Except as provided in paragraph (d)(2) of this section, effective October 29, 1992, VA may pay educational assistance to a veteran or servicemember who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the non-accredited course or unit subject is required in order for the veteran or servicemember to complete his or her program of education,

(ii) On October 29, 1992, the veteran or servicemember was receiving educational assistance for pursuit of the program of education of which the non-accredited independent study course or unit subject forms a part, and

(iii) The veteran or servicemember has remained continuously enrolled in the program of education of which the nonaccredited independent study course or unit subject forms a part from October 29, 1992, to the date of enrollment by the veteran or servicemember in the nonaccredited independent study course or unit subject.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, VA may pay educational assistance to a veteran or servicemember for enrollment in a course or unit subject offered by independent study which, though part of an approved program of education, is not required in order for the veteran or servicemember to complete the program of education (i.e., an elective) when—

(i) The veteran or servicemember was enrolled in and receiving educational assistance for the course or unit subject on October 29, 1992, and

(ii) The veteran or servicemember remains continuously enrolled in the course or unit subject.

(3) Whether or not the veteran or servicemember is enrolled will be determined by the regularly prescribed standards and practices of the educational institution offering the course or unit subject.

(Authority: 38 U.S.C. 3014, 3034, 3076, 3680A(a); sec. 313(b), Pub. L. 102-568, 106 Stat. 4333)

[53 FR 1757, Jan. 22, 1988, as amended at 53 FR 3207, Feb. 4, 1988; 57 FR 15024, Apr. 24, 1992; 61 FR 6788, Feb. 22, 1996; 61 FR 29297, June 10, 1996]

§ 21.7122 Courses precluded.

(a) *Unapproved courses.* VA will not pay educational assistance for an enrollment in any course which has not been approved by a State approving agency or by the VA when that agency

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acts as a State approving agency. VA will not pay educational assistance for a new enrollment in a course when a State approving agency has suspended the approval of the course for new enrollments, nor for any period within any enrollment after the date the State approving agency disapproves a course. See §21.7220 of this part.

(Authority: 38 U.S.C. 3034, 3672; Pub. L. 98-525)

(b) *Courses outside a program of education.* VA will not pay educational assistance for an enrollment in any course which is not part of a veteran's or servicemember's program of education unless the veteran or servicemember is enrolled in refresher courses (including courses 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), deficiency courses, or other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education.

(Authority: 38 U.S.C. 3002(3), 3034, 3452(b); Pub. L. 98-525) (Aug. 15, 1989)

(c) *Erroneous, deceptive, misleading practices.* VA will not pay educational assistance for an enrollment in any course offered by an educational institution which uses advertising, sales or enrollment practices which are erroneous, deceptive or misleading by actual statement, omission or intimation. VA will apply the provisions of §21.4252(h) of this part in making these decisions with regard to enrollments under 38 U.S.C. chapter 30 as it does in making similar decisions with regard to enrollments under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034, 3696; Pub. L. 98-525)

(d) *Restrictions on enrollment: percentage of students receiving financial support.* Except as otherwise provided VA shall not approve an enrollment in any course for a veteran or servicemember, not already enrolled for any period during which more than 85 percent of the students enrolled in the course are hav-

ing all or part of their tuition, fees or other charges paid for them by the educational institution or by VA pursuant to title 38, United States Code. This restriction may be waived in whole or in part. In determining which courses to apply this restriction to and whether to waive this restriction, VA will apply the provisions of §21.4201 of this part to enrollments under 38 U.S.C. chapter 30 in the same manner as it does to enrollments under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034, 3473(d); Pub. L. 98-525)

(e) *Other courses.* VA shall not pay educational assistance for—

(1) An enrollment in an audited course (see §21.4252(i));

(2) An enrollment in a course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see §21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in §21.4252(l);

(5) Except as provided in §21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

(6) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance or monthly certifications of pursuit, an owner of the school, or an operator of the school;

(7) Except as provided in §21.7120(d), an enrollment in a nonaccredited independent study course; or

(8) An enrollment in a course offered under contract for which VA approval is prohibited by §21.4252(m).

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

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28386, July 11, 1990; 56 FR 20135, May 2, 1991; 61 FR 6788, Feb. 22, 1996; 65 FR 81742, Dec. 27, 2000]