

Department of Veterans Affairs

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reservist who is enrolled in a non-accredited 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 reservist to complete his or her program of education and the reservist:

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part; and

(B) 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 the reservist enrolls in the nonaccredited independent study course or unit subject; or

(ii)(A) Was enrolled in and receiving educational assistance for the non-accredited independent study course or unit subject on October 29, 1992; and

(B) Remains continuously enrolled in that course or unit subject.

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

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680A(a)(4); sec. 313(b), Pub. L. 102-568, 106 Stat. 4332)

(d) *Graduate study.* VA will pay educational assistance for an enrollment in a course or subject leading to a graduate degree or certificate when the training occurs after November 29, 1993.

(Authority: 10 U.S.C. 16131(c))

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29303, June 10, 1996]

§ 21.7622 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 VA when that agency 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 that the State approving agency disapproves a course. See § 21.7720 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3672; Pub. L. 98-525)

(b) *Courses not part of a program of education.* VA will not pay educational assistance for an enrollment in any course which is not part of a program of education.

(Authority: 10 U.S.C. 16131; Pub. L. 98-525)

(c) *Erroneous, deceptive, misleading practices.* VA will not pay educational assistance for an enrollment in any courses offered at an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimidation. VA will apply the provisions of § 21.4252(h) in making these decisions with regard to enrollments under 10 U.S.C. chapter 1606.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3696)

(d) *Avocational and recreational.* (1) VA will not pay educational assistance for an enrollment in any course—

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) VA presumes that the following courses are avocational or recreational in character unless the reservist justifies their pursuit to VA as provided in paragraph (3) of this section. The courses are:

(i) Any photography course or entertainment course; or

(ii) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other 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

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

(3) To overcome a presumption that a course is avocational or recreational in character, the reservist 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: 10 U.S.C. 16136(b), 38 U.S.C. 3473(d); Pub. L. 98-525)

(e) *Mitigating circumstances.* The reservist is not entitled to receive payment of educational assistance from VA for a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(1) There are mitigating circumstances, and

(2) The reservist submits the circumstances in writing to VA within 1 year from the date VA notifies the reservist that he or she must submit the mitigating circumstances.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(a); Pub. L. 98-525)

(f) *Other courses.* (1) A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), may not receive any educational assistance for pursuit of any of the types of training listed in § 21.7540(b)(3).

(2) VA will not consider the hospital or field work phase of a nursing course, including a course leading to a degree in nursing, to be provided by an institution of higher learning unless—

(i) The hospital or fieldwork phase is an integral part of the course;

(ii) Completion of the hospital or fieldwork phase of the course is a prerequisite to the successful completion of the course;

(iii) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase of the course; and

(iv) The training is under the direction and supervision of the institution of higher learning.

(3) A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), may not receive educational assistance

for an enrollment in a course pursued after the reservist has completed the course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study, unless the reservist is pursuing a course or courses leading to a graduate degree or graduate certificate. Such a reservist may receive educational assistance while pursuing a course or courses leading to a graduate degree or graduate certificate (subject to the restrictions in § 21.7620(d)). Equivalent evidence of completion of study may include, but is not limited to, a copy of the reservist's transcript showing that he or she has received passing grades in all courses needed to obtain a baccalaureate degree at the institution of higher learning which he or she has been attending.

(4) No reservist may receive payment of educational assistance from VA for:

(i) An audited course (see § 21.4252(i));

(ii) A new enrollment in a course during a period when approval has been suspended by a State approving agency or VA;

(iii) Pursuit of a course by a non-matriculated student except as provided in § 21.4252(l);

(iv) An enrollment in a course at an educational institution for which the reservist is an official of such institution authorized to sign certificates of enrollment under 10 U.S.C. chapter 1606;

(v) A new enrollment in a course which does not meet the veteran-non-veteran ratio requirement as computed under § 21.4201;

(vi) Except as provided in § 21.7620(c), an enrollment in a nonaccredited independent study course; or

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

(Authority: 10 U.S.C. 16131(c), 16136(b); 38 U.S.C. 3672(a), 3676, 3680(a), 3680A(f), 3680A(g); § 642, Public Law 101-189, 103 Stat. 1458)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29304, June 10, 1996; 62 FR 55762, Oct. 28, 1997; 65 FR 81743, Dec. 27, 2000]

§ 21.7624 **Overcharges and restrictions on enrollments.**

(a) *Overcharges.* VA may disapprove an educational institution for further