

## Department of Veterans Affairs

## § 21.7722

(d) § 21.4153—Reimbursement of expenses,

(e) Section 21.4154—Report of activities,

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3670 through 3676)

[53 FR 34740, Sept. 8, 1988, as amended at 55 FR 48844, Nov. 23, 1990; 61 FR 29310, June 10, 1996]

### APPROVAL OF COURSES

#### § 21.7720 Course approval.

(a) *Courses must be approved.* (1) A course of education offered by an educational institution must be approved by—

(i) The State approving agency for the State in which the educational institution is located; or

(ii) The State approving agency which has appropriate approval authority; or

(iii) VA, where appropriate.

(2) In determining when approval authority rests with the State approving agency or VA, the provisions of § 21.4250 (b)(3), (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) apply.

(3) A course approved under 38 U.S.C. chapter 36 is approved for purposes of 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994).

(Authority: 10 U.S.C. 2131(c), 2136(b); 16131(c)(1), 16136(b); 38 U.S.C. 3672; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101-189, 103 Stat. 1456-1458)

(b) *Course approval criteria.* In administering benefits payable under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), VA and, where appropriate, the State approving agencies, shall apply the following sections:

(1) § 21.4250 (except paragraph (c)(1))—Approval of courses;

(2) § 21.4251—Period of operation of course;

(3) § 21.4253 (except those portions of paragraphs (b) and (f) that permit approval of a course leading to a high school diploma)—Accredited courses;

(4) § 21.4254—Nonaccredited courses;

(5) § 21.4255—Refund policy; non-accredited courses;

(6) § 21.4258—Notice of approval;

(7) § 21.4259—Suspension or disapproval;

(8) § 21.4260—Courses in foreign countries;

(9) § 21.4261—Apprentice courses;

(10) § 21.4262—Other training on-the-job courses;

(11) § 21.4265—Practical training approved as institutional training or on-job training;

(12) § 21.4266—Courses offered at subsidiary branches or extensions; and

(13) § 21.4267—Approval of independent study.

(Authority: 10 U.S.C. 16131(c)(1), 16136(b); 38 U.S.C. 3670 through 3676)

[61 FR 29310, June 10, 1996, as amended at 62 FR 55762, Oct. 28, 1997]

#### § 21.7722 Courses and enrollments which may not be approved.

(a) The Secretary of Veterans Affairs may not approve an enrollment by a reservist in, and a State approving agency may not approve for training under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994):

(1) A bartending or personality development course;

(2) A course offered by radio;

(3) Except for enrollments in a nurse's aide course approved pursuant to § 21.4253(a)(5), an institutional course for the objective of nurse's aide or a nonaccredited nursing course which does not meet the licensing requirements in the State where the course is offered; or

(4) Effective October 29, 1992, a non-accredited course or unit subject offered entirely or partly by independent study. However, see §§ 21.7620(c) and 21.7622(f) concerning payment of educational assistance to reservists enrolled in such a course.

(Authority: 10 U.S.C. 16131(c)(1), 16136(b); 38 U.S.C. 3452)

(b) A State approving agency (or VA when acting as a State approving agency) may approve the following courses for training under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), but VA may not approve an enrollment in any of these courses by a reservist who is limited in the types of courses he or

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she may pursue, as provided in § 21.7540 (b)(2) and (b)(3):

- (1) A correspondence course;
- (2) A cooperative course;
- (3) An apprenticeship or other on-job training program;
- (4) A nursing course offered by an autonomous school of nursing;
- (5) A medical or dental specialty course not offered by an institution of higher learning;
- (6) A refresher, remedial, or deficiency course; or
- (7) A course or combination of courses consisting solely of independent study.

(Authority: 10 U.S.C. 2131(c), 2136(b), 16131(c)(1), 16136(b); 38 U.S.C. 3670 through 3676; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101-189, 103 Stat. 1456-1458)

[61 FR 29310, June 10, 1996]

### ADMINISTRATIVE

#### § 21.7801 Delegation of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Under Secretary for Benefits of VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA designated by the Under Secretary for Benefits to make findings and decisions under 10 U.S.C. chapter 1606 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter to the extent that the program is administered by VA.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 512(a); Pub. L. 98-525)

(b) *Other delegations of authority.* In administering benefits payable under 10 U.S.C. chapter 1606, VA shall apply § 21.4001(b), (c)(1), (2), and (3) (in part), and (f) in the same manner as those paragraphs are applied in the administration of 38 U.S.C. chapter 34.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 512(a); 3696; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29483, June 11, 1996]

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

#### § 21.7802 Finality of decisions.

(a) *Agency decisions generally are binding.* The decision of the VA facility of original jurisdiction on which an action is based—

- (1) Will be final,
- (2) Will be binding upon all facilities of VA as to conclusions based on evidence on file at that time, and
- (3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7803. (See §§ 19.192 and 19.193 of this chapter).

(Authority: 38 U.S.C. 511)

(b) *Decisions of an Activity within the VA.* Current determinations of pertinent elements of eligibility for a program of education made by a VA adjudicative 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.

(Authority: 38 U.S.C. 511)

(c) *Determinations of satisfactory participation.* A determination made by a competent military or naval authority or by the Coast Guard as to whether or not an individual is participating satisfactorily in required training as a member of the Selected Reserve is binding upon VA.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29483, June 11, 1996]

#### § 21.7803 Revision of decisions.

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

- (a) Clear and unmistakable error, § 3.105(a) of this chapter; and
- (b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 511)

#### § 21.7805 Conflicting interests.

In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4005 in the same manner as they are applied in the