

## § 21.3344

## 38 CFR Ch. I (7–1–04 Edition)

(c) *Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos.* When the eligible person is pursuing training at an institution located in the Republic of the Philippines or when an eligible child's entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.40(b), (c), or (d) of this chapter, payments of special training allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.

(Authority: 38 U.S.C. 3532(d), 3542, 3565)

[35 FR 9814, June 16, 1970, as amended at 48 FR 37975, Aug. 22, 1983; 50 FR 19934, May 13, 1985; 57 FR 29799, July 7, 1992; 61 FR 29295, June 10, 1996; 63 FR 67779, Dec. 9, 1998; 66 FR 32228, June 14, 2001; 68 FR 34322, June 9, 2003; 68 FR 37206, June 23, 2003]

### SPECIAL ASSISTANCE AND TRAINING

#### § 21.3344 Special assistance for the educationally disadvantaged.

(a) *Enrollment.* VA may approve the enrollment of an eligible person in an appropriate course or courses at the secondary school level. This approval may be made only if the eligible person—

(1) Has not received a secondary school diploma (or an equivalency certificate);

(2) Needs additional secondary school education, remedial, refresher, or deficiency courses, to qualify for admission to an appropriate educational institution in a State in order to pursue a program of education; and

(3) Is to pursue the course or courses in a State.

(Authority: 38 U.S.C. 3491(a), 3533)

(b) *Measurement.* VA will measure remedial, deficiency, or refresher courses offered at the secondary school level as provided in §§ 21.4270(a)(2) and 21.4272(k).

(Authority: 38 U.S.C. 3533)

(c) *Educational assistance.* VA will authorize educational assistance at the monthly rates specified in § 21.3131.

(Authority: 38 U.S.C. 3491(a), 3533)

(d) *Entitlement charge.* The provisions of § 21.3045 will determine whether VA will make a charge against the period of the entitlement of the eligible person because of enrollment in a course under the provisions of this section.

(Authority: 38 U.S.C. 3533)

(e) *Certifications.* (1) Certifications of the eligible person's need for deficiency or remedial courses in basic English language skills and mathematics skills may be made by:

(i) A VA counseling psychologist in the Vocational Rehabilitation and Employment Division;

(ii) The educational institution administering the course; or

(iii) The educational institution where the student has applied for admission.

(2) Certification of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Administering the course which the eligible person is planning to enter; or

(ii) Where the eligible person has applied for admission.

(Authority: 38 U.S.C. 3533)

(f) *Basic skills.* Basic English language courses or mathematics courses will be authorized when it is found by accepted testing methods that the eligible person is lacking in basic reading, writing, speaking, or essential mathematics.

(Authority: 38 U.S.C. 3533)

[61 FR 26112, May 24, 1996]

### Subpart D—Administration of Educational Assistance Programs

AUTHORITY: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

SOURCE: 31 FR 6774, May 6, 1966, unless otherwise noted.

#### ADMINISTRATIVE

#### § 21.4001 Delegations of authority.

(a) Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the

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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;