

## Department of Veterans Affairs

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(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:

(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action;

(ii) Give the reasons why the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments; and

(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b))

(f) *Actions in cases indicating submission of false, misleading, or fraudulent claims or statements.* The Director of the VA facility of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Di-

rector will follow the procedures in part 42 of this title.

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801-3812; 38 U.S.C. 3034(a), 3241(a), 3690(d))

(g) *Referral to the Committee on Educational Allowances.* If the Director of the VA facility of jurisdiction suspends payment of educational assistance to, or suspends approval of the enrollment or reenrollment of, individuals in any course or courses as provided in paragraph (d) of this section, the Director will refer the matter to the Committee on Educational Allowances as provided in §21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) *Withdrawal of referral to Committee on Educational Allowances.* (1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA facility of jurisdiction determines that the conditions which justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course or courses, the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35831, July 1, 1998]

### **§21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.**

(a) *Authority.* VA is authorized by 38 U.S.C. 3690 to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA

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finds that the program of education or course in which such individuals are enrolled fails to meet any of the requirements of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, or when VA finds an educational institution or training establishment has violated any such statute or regulation, or fails to meet any such statutory or regulatory requirement. Sections 21.4210 and 21.4216 implement that authority. This section provides for establishment of a Committee on Educational Allowances within each VA facility of jurisdiction whose findings of fact and recommendations will be provided to the Director of that VA facility, to whom such authority to discontinue educational benefits or disapprove enrollments or reenrollments has been delegated.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) *Purpose.* (1) The Committee on Educational Allowances is established to assist the Director of the VA facility of jurisdiction in reaching a conclusion as to whether, in a specific case, educational assistance to all individuals enrolled in any course or courses offered by the educational institution should be discontinued and, if appropriate, whether approval of all further enrollments or reenrollments in those courses should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs administered by VA because a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, is not being met or a provision of such statute or regulation has been violated.

(2) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments.

Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to the Committee any evidence, argument, or other material considered pertinent.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) *Jurisdiction.* The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§ 21.4210(g) and 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) *Committee members.* The Committee on Educational Allowances will consist of three employees of the VA facility of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA facility of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) *Duties and responsibilities of the Committee.* (1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA facility of jurisdiction in connection with specific cases referred for consideration as provided in §§ 21.4210(g) and 21.4212.

(2) The performance of this function will include:

(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;

(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and

(iii) Furnishing the Director of the VA facility of jurisdiction a written

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statement setting forth specifically the question or questions considered, a summation of the essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity, both the majority and the minority views and recommendations will be furnished.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35833, July 1, 1998]

### § 21.4212 Referral to Committee on Educational Allowances.

(a) *Form and content of referral to Committee.* When the Director of the VA facility of jurisdiction refers a case to the Committee on Educational Allowances, as provided in § 21.4210(g), the referral will be in writing and will—

(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;

(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;

(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;

(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and

(5) Ask the Committee on Educational Allowances to perform the functions described in §§ 21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued and approval of new enrollments or reenrollments denied.

(b) *Notice of the referral.* (1) At the time of referral the Director will—

(i) Send notice of the referral, including a copy of the referral document, by certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institu-

tion has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;

(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and

(iii) Place a copy of the notice and referral document on display at the VA facility of jurisdiction for review by any interested party or parties.

(2) The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35834, July 1, 1998]

### § 21.4213 Notice of hearing by Committee on Educational Allowances.

(a) *Content of hearing notice.* In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in § 21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of—

(1) The time and place of the hearing;

(2) The matters to be considered;

(3) The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and

(4) The complete hearing rules and procedures.

(b) *Expenses connected with hearing.* The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.