

**§21.276**

**38 CFR Ch. I (7-1-08 Edition)**

(i) Repayment will begin on the earlier of the following dates:

(A) The first day of the month following the month in which the advance is granted; or

(B) The first day of the month after receipt of the advance in which the veteran receives a subsistence allowance

(ii) The VR&C staff person who approves the advance will determine the rate of repayment.

(iii) The monthly rate of repayment may not be less than 10 percent of the amount advanced unless the monthly benefit against which the advance is being offset is less than that amount.

(2) *Offset not possible.* If the amount advanced cannot be repaid from the benefits cited in paragraph (f)(1) of this section because the veteran is not in receipt of any of these benefits, collection of the amount due will be made in the same manner as any other debt payable to VA.

(Authority: 38 U.S.C. 3112)

**§21.276 Incarcerated veterans.**

(a) *General.* The provisions contained in this section describe the limitations on payment of subsistence allowance and charges for tuition and fees for:

(1) Incarcerated veterans;

(2) Formerly incarcerated veterans in halfway houses; and

(3) Incarcerated and formerly incarcerated veterans in work release programs.

(Authority: 38 U.S.C. 3108(g), 3680(a))

(b) *Definition.* The term *incarcerated veteran* means any veteran incarcerated in a Federal, State, or local prison, jail, or other penal institution for a felony. It does not include any veteran who is pursuing a rehabilitation program under Chapter 31 while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(c) *Subsistence allowance not paid to an incarcerated veteran.* A subsistence allowance may not be paid to an incarcerated veteran convicted of a felony, but VA may pay all or part of the veteran's tuition and fees.

(Authority: 38 U.S.C. 3108(g))

(d) *Halfway house.* A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.

(Authority: 38 U.S.C. 3108(a))

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

(f) *Services.* VA may provide other appropriate services, including but not limited to medical, reader service, and tutorial assistance necessary for the veteran to pursue his or her rehabilitation program.

(Authority: 38 U.S.C. 3108(g))

(g) *Payment of allowance at the rates paid under Chapter 30.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30.

(Authority: 38 U.S.C. 3108(f), 3680(a))

(h) *Apportionment.* Apportionment of subsistence allowance which began before October 17, 1980 made to dependents of an incarcerated veteran convicted of a felony may be continued.

(Authority: 38 U.S.C. 3108(g))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22807, June 23, 1986; 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

**ENTERING A REHABILITATION PROGRAM**

**§21.282 Effective date of induction into a rehabilitation program.**

(a) *General.* Except as provided in paragraph (b) the effective date of induction of a veteran into a rehabilitation program will be one of the dates provided in §§21.320 through 21.334.

(Authority: 38 U.S.C. 3108)

## Department of Veterans Affairs

## § 21.283

(b) *Retroactive induction.* (1) A veteran may be inducted into a vocational rehabilitation program retroactively when all of the following conditions are met:

(i) The period for which retroactive induction is requested is within the veteran's basic period of eligibility or extended eligibility as provided in §§ 21.41 through 21.44;

(ii) The veteran was entitled to disability compensation during the period for which retroactive induction is requested, and met the criteria of entitlement to vocational rehabilitation for that period; and

(iii) The training the veteran pursued during the period is applicable to the occupational objective that is confirmed in initial evaluation to be compatible with his or her disability, consistent with his or her abilities, interests, and aptitudes, and otherwise suitable for accomplishing vocational rehabilitation.

(Authority: 38 U.S.C. 5113)

(2) A veteran shall not be inducted into a vocational rehabilitation program retroactively if any of the following conditions exist even though all conditions of paragraph (b) of this section are met;

(i) Timely induction was prevented by the veteran's lack of cooperation in completing an initial evaluation;

(ii) The veteran has previously received benefits under another VA program of education or training for any period for which retroactive benefits are being requested under Chapter 31;

(iii) A period of extended evaluation is authorized to determine the reasonable feasibility of a vocational goal; or

(iv) The veteran's claim is not received within the time limits described in § 21.31.

(Authority: 38 U.S.C. 3101(9))

(c) *Effective date of retroactive induction.* The effective date of a veteran's retroactive induction into training shall be no earlier than one year prior to the date of application for Chapter 31 benefits but in no event may precede:

(1) The effective date of the establishment of the veteran's compensable service-connected disability; or

(2) The first date the veteran began training in the program leading to the occupational objective established in the veteran's plan.

(Authority: 38 U.S.C. 5113)

### § 21.283 Rehabilitated.

(a) *General.* For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101 (1), (2))

(b) *Definition.* The term "suitably employed" includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veterans' aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if: