

§ 21.4006

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by the educational institution must be withdrawn;

(2) The reasons for the withdrawal of approval; and

(3) The conditions that will permit the courses or such tests to be approved again.

(Authority: 38 U.S.C. 3683, 3689(d))

(e) *Notice to veterans and eligible persons.* (1) The veteran or eligible person will be notified in writing sent to his or her latest address of record when, in circumstances involving a finding of conflicting interests:

(i) The course or courses are disapproved by the State approving agency, or

(ii) The State approving agency fails to disapprove the course or courses within 15 days after the date of written notice to the agency, and no waiver has been requested, or

(iii) Waiver has been denied.

(2) The veteran or eligible person will be informed that he or she may apply for enrollment in an approved course in another educational institution, but that in the absence of such transfer, educational assistance allowance payments will be discontinued effective the date of discontinuance of the course, or the 30th day following the date of such letter, whichever is earlier.

(Authority: 38 U.S.C. 3683, 3690, 5104)

[31 FR 6774, May 6, 1966, as amended at 43 FR 3707, Jan. 27, 1978; 51 FR 16315, May 2, 1986; 61 FR 20728, May 8, 1996; 72 FR 16967, Apr. 5, 2007]

§ 21.4006 False or misleading statements.

(a) *Payments may not be based on false statements.* Except as provided in this section payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States.

(Authority: 38 U.S.C. 3690)

(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.

(2) When the Department of Veterans Affairs discovers that a certification or claim is false after it has released payment, the Department of Veterans Affairs will establish an overpayment for only that portion of the claim to which the claimant was not entitled.

(Authority: 38 U.S.C. 3680)

(b) *Effect of false statements on subsequent payments.* A claimant's false or misleading statements are not a bar to payments based on further training.

(Authority: 38 U.S.C. 3680)

(c) *Forfeiture.* The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of § 21.4007.

(Authority: 38 U.S.C. 6103)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14932, June 7, 1973; 48 FR 37976, Aug. 22, 1983]

§ 21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.

(Authority: 38 U.S.C. 6103, 6104 and 6105)

[54 FR 4286, Jan. 30, 1989]

§ 21.4008 Prevention of overpayments.

(a) *Prevention of overpayments to veterans and eligible persons enrolled in educational institutions.* When approval of a course may be withdrawn, and overpayments may exist or may be created, VA may suspend further payments to veterans and eligible persons enrolled in the educational institution offering the course until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3690(b))

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(b) *Prevention of overpayments to veterans and eligible persons taking licensing and certification tests.* When approval of a licensing or certification test may be withdrawn, and overpayments may exist or may be created, VA may suspend payments to veterans and eligible persons taking that test until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3689(a), 3690(b))

[72 FR 16968, Apr. 5, 2007]

§ 21.4009 Waiver or recovery of overpayments.

For the purposes of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

(a) *General.* (1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Department of Veterans Affairs determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by §§ 21.4203 and 21.4204, discontinuance or interruption of a course by a veteran, reservist or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Department of Veterans Affairs may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Department of Veterans Affairs may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Department of Veterans Affairs determines the false certification or misrepresentation resulted from an administrative error or a misstatement of

fact and that no criminal or civil action is warranted.

(4) If the Department of Veterans Affairs recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Department of Veterans Affairs subsequently collects the overpayment from a veteran or eligible person. The reimbursement—

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and interest) exceeds the total amount for which the educational institution is liable, and

(ii) Will be equal to the excess.

(5) This paragraph does not preclude the imposition of any civil or criminal liability under this or any other law.

(b) *Reporting.* (1) If a school is required to make periodic or other certifications, the Department of Veterans Affairs may consider the following in determining whether a school is potentially liable for an overpayment:

(i) The school’s failure to report, or to report timely facts which resulted in an overpayment, or

(ii) The school’s submission of an incorrect certification as to fact.

(2) In either instance the Department of Veterans Affairs will consider other pertinent factors such as:

(i) Allowing for occasional clerical error or occasional administrative error:

(ii) The school’s past reliability in reporting;

(iii) The adequacy of the school’s reporting system; and

(iv) The extent of noncompliance with reporting requirements.

(Authority: 38 U.S.C. 3685)

(c) *Committee on School Liability.* (1) Each VA Regional Processing Office shall have a Committee on School Liability. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines.

(2) The Secretary delegates to each Committee on School Liability, and to