

Department of Veterans Affairs

§ 21.4009

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eligible persons taking licensing and certification tests.* When approval of a licensing or certification test may be withdrawn, and overpayments may exist or may be created, VA may suspend payments to veterans and eligible persons taking that test until the question of withdrawing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

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any panel that the chairperson of the Committee may designate and draw from the Committee, the authority to find whether an educational institution is liable for an overpayment.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241, 3685, 3689(d))

(d) *Initial decision.* (1) The Education Officer of the VA Regional Processing Office of jurisdiction, or the Service Center Manager when the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction, will decide whether there is evidence that would warrant a finding that an educational institution is potentially liable for an overpayment.

(2) Following each finding of potential liability, the Finance Officer of the VA Regional Processing Office of jurisdiction will notify the educational institution in writing of VA's intent to apply the liability provisions of paragraph (a) of this section. The notice will—

(i) Identify the students who were overpaid;

(ii) Identify the veterans and eligible persons who took the licensing or certification test and were overpaid;

(iii) Set out in the case of each student, or in the case of each veteran or eligible person who took the test, the educational institution's actions or omissions which resulted in the finding that the educational institution was potentially liable for the overpayment; and

(iv) State that VA will determine liability on the basis of the evidence of record unless the VA Regional Processing Office of jurisdiction receives additional evidence or a request for a hearing within 30 days of the date the educational institution received the notice.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241, 3685, 3689(d))

(e) *Hearings.* An educational institution is entitled to a hearing before a panel drawn from the Committee on School Liability before a decision is made as to whether it is liable for an overpayment. Every hearing will be preceded by a prehearing conference unless the conference is waived by the educational institution. The Committee on School Liability will con-

sider all evidence and testimony presented at the hearing.

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(f) *Extent of liability.* Waiver of collection of an overpayment as to a veteran, reservist, or eligible person will not relieve the educational institution of liability for the overpayment. Recovery in whole or in part from the veteran, reservist, or eligible person will limit such liability accordingly. If an overpayment has been recovered from the educational institution and the veteran, reservist, or eligible person subsequently repays the amount in whole or in part, the amount repaid will be reimbursed to the educational institution.

(Authority: 38 U.S.C. 3685, 3689)

(g) *Notice to educational institution.* The educational institution shall be notified in writing of the decision of the Committee on School Liability. If the educational institution is found liable for an overpayment, the educational institution also will be notified of the right to appeal the decision to the Central Office School Liability Appeals Board within 60 days from the date of the letter to the educational institution containing notice of the decision. The 60-day time limit may be extended to 90 days at the discretion of the chairperson of the Committee on School Liability. The appeal must be in writing setting forth fully the alleged errors of fact and law. If an appeal is not received within the 60-day time limit, the Committee decision is final.

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(h) *Appeals.* An appeal will be forwarded to Central Office where it will be considered by the School Liability Appeals Board. The Board's decision will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the Committee on School Liability in any case where the Board reverses a decision made by the Committee that the educational institution is liable.

(Authority: 38 U.S.C. 512(a), 3685, 3689)

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(i) *Review.* Review by the School Liability Appeals Board is limited to the issues raised by the educational institution and shall be on the record and not de novo in character. The Board may affirm, modify or reverse a decision of the Committee on School Liability or may remand an appeal for further consideration by the appropriate Committee on School Liability. If new and material evidence is discovered while the School Liability Appeals Board is considering a case, the Board may remand the case to the appropriate Committee on School Liability.

(Authority: 38 U.S.C. 512(a), 3685, 3689)

(j) *Finality of decisions.* The School Liability Appeals Board has authority to act for the Secretary in deciding appeals concerning an educational institution's liability for an overpayment. There is no right of additional administrative appeal of a decision of the School Liability Appeals Board.

(Authority: 38 U.S.C. 512(a), 3685, 3689)

[32 FR 4533, Mar. 25, 1967, as amended at 44 FR 15492, Mar. 14, 1979; 48 FR 37976, Aug. 22, 1983; 49 FR 35630, Sept. 11, 1984; 51 FR 16316, May 2, 1986; 61 FR 20728, May 8, 1996; 61 FR 26112, May 24, 1996; 62 FR 55760, Oct. 28, 1997; 71 FR 28586, May 17, 2006; 72 FR 16968, Apr. 5, 2007]

GENERAL

§ 21.4020 Two or more programs.

(a) *Limit on training under two or more programs.* The aggregate period for which any person may receive assistance under two or more of the following laws may not exceed 48 months (or the part-time equivalent):

(1) Part VII or VIII, Veterans Regulations numbered 1(a), as amended:

(2) Title II of the Veterans' Readjustment Assistance Act of 1952;

(3) The War Orphans' Educational Assistance Act of 1956;

(4) 38 U.S.C. Chapters 30, 32, 34, 35 and 36 and the former Chapter 33;

(5) 10 U.S.C. Chapters 107 and 1606;

(6) Section 903 of the Department of Defense Authorization Act, 1981,

(7) The Hostage Relief Act of 1980, and

(8) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3695(a))

(b) *Limit on combining assistance received under Chapter 31 with assistance under another program.* No person may receive assistance under Chapter 31, Title 38 U.S.C. in combination with any provisions of law listed in paragraph (a) of this section in excess of 48 months (or the part-time equivalent) unless the Department of Veterans Affairs determines that additional months of benefits under Chapter 31 are necessary to accomplish the purpose of the veteran's rehabilitation program.

(Authority: 38 U.S.C. 3695(b))

[48 FR 37976, Aug. 22, 1983, as amended at 51 FR 16316, May 2, 1986; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996]

§ 21.4022 Nonduplication—programs administered by VA.

A veteran or eligible person who is eligible for education or training benefits under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person cannot receive such benefits concurrently. The individual must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. Except for an election between 38 U.S.C. chapters 32 and 34 which is irrevocable once a check has been negotiated, the person may reelect at any time.

(a) 38 U.S.C. chapter 30,

(b) 38 U.S.C. chapter 31,

(c) 38 U.S.C. chapter 32,

(d) 38 U.S.C. chapter 34,

(e) 38 U.S.C. chapter 35,

(f) 10 U.S.C. chapter 1606,

(g) Section 903 of the Department of Defense Authorization Act, 1981

(h) The Hostage Relief Act of 1980, or

(i) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

[34 FR 843, Jan. 18, 1969, as amended at 48 FR 37976, Aug. 22, 1983; 50 FR 27826, July 8, 1985; 51 FR 16316, May 2, 1986; 54 FR 33887, Aug. 17, 1989; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996; 61 FR 26113, May 24, 1996]